IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

CASE NO. 05-017154-FC

Plaintiff,

JUDGE: ARCHIE L. HAYMAN

vs.

OMAR RASHAD POUNCY,

Defendant.

MECEIVE

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SECOND DISTRICT SANDRA SCHULTZ MENGEL CHIEF CLERK

JURY TRIAL

BEFORE THE HONORABLE ARCHIE L. HAYMAN, CIRCUIT JUDGE

Flint, Michigan - Tuesday, January 24, 2006

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Tuesday, January 24, 2006 at 9:40 a.m.  THE COURT: We're on the record in the People of the State of Michigan versus Omar Rashad Pouncy, case number 05-17154-FC and Mr. Larobardiere would you state your appearance please?  MR LAROBARDIERE: Chris Larobardiere for the People Judge.  THE COURT: All right and Mr. Breczinski?  MR. BRECZINSKI: Mike Breczinski on behalf of defendant.  THE COURT: All right Mr. Pouncy would you state your name sir?  MR. POUNCY: Omar Pouncy.  THE COURT: All right this is the date set for
of the State of Michigan versus Omar Rashad Pouncy, case number 05-17154-FC and Mr. Larobardiere would you state your appearance please?  MR LAROBARDIERE: Chris Larobardiere for the People Judge.  THE COURT: All right and Mr. Breczinski?  MR. BRECZINSKI: Mike Breczinski on behalf of defendant.  THE COURT: All right Mr. Pouncy would you state your name sir?  MR. POUNCY: Omar Pouncy.
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13 state your name sir?  14 MR. POUNCY: Omar Pouncy.
MR. POUNCY: Omar Pouncy.
15 THE COURT: All right this is the date set for
trial in this matter and first of all is there anything
that you need to bring to my attention Mr. Breczinski
before we get started here?
MR. POUNCY: I do man, I mean-
THE COURT: Just one second, I'll get to you
just a second. Anything that you have Mr. Breczinski?
MR. BRECZINSKI: Your Honor I talked to my
MR. BRECZINSKI: Your Honor I talked to my

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have as to possible alibi witnesses and such. what he's told me. He's made numerous calls and seen people and reviewing reports and everything else and hasn't, and talked to my client I know several times. Other than that I don't have a written report, any final written report from him though. Since I have no details to say whether I'm ready for trial or not is problematic-THE COURT: Okay.

MR. BRECZINSKI: just because I don't have that full detailed report from him which I was expecting.

THE COURT: All right then Mr. Larobardiere is there anything you need to bring to my attention?

MR. LAROBARDIERE: Well Judge just by way of follow-up to that, it's my understanding that the investigator did make attempts and made some contacts, however was unsuccessful in furthering the defense's theory or investigation. That's my understanding. that he did take steps you know we're, we're not, it's my understanding he didn't do anything. We're not saying he didn't do anything, that he did make attempts, those attempts were fruitless and that's where we stand today. That's my understanding.

THE COURT: All right Mr. Pouncy do you want to stand sir and what would you like to say sir?

MR. POUNCY: What I would like to say, I really

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don't think this, we, we ready to go on because um, well I was about to say um first I really, my, me and my attorney not, we really not, really not on the same page to be honest. This, today our first time really talkin' and me bein' able to really, you know what I'm sayin', let him implicate the things that is, that I have problems with in this report with the inconsistencies. have, I request for motions to be filed and no motions was filed you know what I'm sayin'? My, my alibi um motion that I, that's what I understand I'm not a um Johnnie Cochran or nothin' you know what I'm sayin' but you know what I'm sayin' I know that you have to file for a alibi and I do have a alibi you know and, and I gave, I did get with Mr. Acardo or whatever and I only gave him one number. So it's only one number that he only asked for, one number which was part of my alibi you know I mean? Probably not got in contact with, with the person but it's easy to get in contact with. You know I'm just really, I wrote um what's, Barbara Menear, the Defender Administrator and asked for um further, a, a different counsel because I don't really feel satisfied with the one I have and I been, I, I think I wrote you too and but I didn't put that in there or whatever but it's just I don't really feel comfortable with talkin' to him 'cause every time we try to talk it's not like, you know what

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I'm sayin', it's, I think it's like some kind of conflict we don't get a chance to talk you know what I'm sayin'? The longest we ever talked was today and me bein' able to describe my um, my, my um discrepancies that I have within this and the viewpoints that I seen in the, in the um transcripts and the police report, I don't even have the discovery, you know what I'm sayin', discovery packet or what's tryin' to be used against me you know. All I have is a, a view of a size 11 shoe print, you know what I'm sayin' that Mr. Acardo looked, measured my foot, foot print and it was a size 131/2. You know I mean that's the only thing I know that's really in my defense you know what I'm sayin'? That's the only thing I really know, you know what I mean? And a line-up wasn't done and, and then um the, the State's the la, the lady um I think her name was Mich, Mrs. Sandstrom or whatever, she stated that she viewed the pictures on the 12<sup>th</sup> or whatever, she viewed the pictures on the 12th, she viewed the pictures on the 12th or, or what not, she say she viewed the pictures on the 12th and the, the photo line-up wasn't even conducted until the 13th, you know what I If she stated that she only viewed one picture I got, I wrote the Civil Rights Unit, they told me they going to get the ACLU in 'cause I wasn't read no rights. I don't have a copy of the statement that I made, you

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know what I mean or none of that stuff. I don't, I don't even feel like I'm ready, it's not, I'm not ready prepared. If I had a further counsel and a better understanding or if some motions would have been filed to see if, even if they was denied or not but I, I really feel you know what I'm sayin' that this, um, it's not ready. I'm not gettin' proper representation um honestly. I wrote who I thought I was supposed to write you know what I mean I, I haven't got a response yet but I really don't feel comfortable with, with the representation that I have now. I mean this, this the longest I ever talked to him today, was today and that was probably like ten, fifteen minutes and then you called him in and that's the longest and you know what I'm sayin'? It's just I don't feel comfortable that's all.

THE COURT: I hear what you're saying. You can have a seat sir. And you want to say anything about this Mr. Breczinski at all?

MR. BRECZINSKI: I've been over a number of times. Some of us have, we've had differences as to what the, let's say-

THE COURT: How many times do you think you've been over to visit him since he's been over here in Circuit Court?

1	MR. BRECZINSKI: Maybe a half-dozen at least-
2	THE COURT: Okay.
3	MR. BRECZINSKI: something like that.
4	THE COURT: All right.
5	MR. BRECZINSKI: More than-
6	THE COURT: and you agree with that Mr. Pouncy?
7	MR. POUNCY: Yes right but we don't talk. He
8	come drop off a piece of paper, the paper, the
9	transcripts he drops it off. I don't get to talk to him.
10	I talk to the, I filed a um appeal. I talked to a appeal
11	attorney about this case, and he don't have nothin' to do
12	with it, longer than I done talked to my, the attorney
13	that supposed to represent me on it. I don't have no, no
14	motions. Man I asked that a motion be filed for my, for
15	the um-
16	THE COURT: Okay just one second if you don't
17	mind. Mr. Pouncy he's been over to see you a half-a-
18	dozen times. That's quite a few times for, for a lawyer
19	to go over and, and visit with their clients since they
20	arrived at Circuit Court. Mr. Breczinski has been doin'
21	this work probably as long as you've been livin' on this
22	planet. I don't know-
23	MR. POUNCY: But we haven't talked man.
24	THE COURT: how old are you. Just, I want you
25	to listen. I stood here and I, I listened to you and I

didn't interrupt you one bit-

MR. POUNCY: Sorry about that.

THE COURT: yeah so now how old are you Mr.

Pouncy?

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MR. POUNCY: Eighteen.

THE COURT: He's been practicin' law longer than you've been born okay? If you go and take an automobile to get the transmission rebuilt, you don't go in there and ask the guy who's rebuildin' the transmission every detail that he's doin'. You bring the car in, you drop it off and you come back and pick it up. And the reason is is because you expect that this person knows how to build a transmission and he doesn't have to talk to you about buildin' this transmission you know 'cause he's built 'em before. He's built a hundred thousand of 'em probably by the time you show up with yours. And so you, when you talk about motions and you talk about all these things that should have been done, Mr. Breczinski is a lawyer who will file motions if it's appropriate to file motions. And if he didn't file a motion, there's probably a good chance that there's not a, a legal basis to file the motion. Lawyers can't just file motions to be filin' 'em. They have to have a basis in law and in fact to file a motion okay? Now you might think it's, it's wise to file the motion but you don't

know the law. So there's no way for you to really judge that. Unfortunately, you're in a position where you really just don't have a, a way of judging whether he's a good lawyer or not. And that's just the bottom line. It's just like a doctor you know? You don't know whether a doctor is really good at what they do or not. You, you take people's word about the repu, his reputation or her reputation but you have no idea because you don't know anything about medicine and you don't know what's involved in the surgery that you're goin' through. So you're not in a position to judge. Now I know you're not hearing what I'm saying but-

MR. POUNCY: I am.

THE COURT: and I'm not asking you to in, to interrupt because I'm not finished okay? Now I know you're not really hearin' what I'm sayin' but you're not in a position to judge whether Mr. Breczinski knows how to do his job or not. So at this point I'm not really in a position to grant your request to have new counsel because we're here on the day of trial, we got a jury downstairs that's ready to go and we're gonna try this case today Mr. Pouncy. Mr. Breczinski you've indicated here that you've had a private investigator that's been hired at County expense that's gone out and has tried to follow up on some of the leads that Mr. Pouncy has given

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and he's come up with nothin'. I mean and-

MR. POUNCY: (Inaudible).

THE COURT: Mr. Pouncy I'm not talkin' to you right now okay? I'm gonna ask you to remain quiet until I'm done.

MR. POUNCY: All right.

THE COURT: What it sounds like to me then is that the investigator has filed, followed up with the leads and he just hasn't been able to come up with anything. And maybe that's because there may or may not be anything to come up with I don't know. Has Mr. Pouncy said anything to you about filing an alibi notice for him?

MR. BRECZINSKI: Your Honor we have discussed that matter. That's one of the reasons I got the investigator so he could go out and-

THE COURT: If he could find this alibi for him?

MR. BRECZINSKI: find the possible witnesses.

Obviously, if there are no other witnesses, he can get up on the stand with or without a notice and say I wasn't there. Well you need an alibi notice if you've got other proof witnesses or other material proof of that alibi-

THE COURT: And you have put this investigator in contact with Mr. Pouncy-

MR. BRECZINSKI: Yes.

THE COURT: and Mr. Pouncy has given him the information that he had to locate this person or persons that have the alibi is that correct?

MR. BRECZINSKI: I have also given the investigator copies of everything in my file, copies of the transcripts also from the preliminary exam so he has everything that I have also that he's reviewed. I understand that so he-

THE COURT: I'll come back to you in a minute.

MR. BRECZINSKI: might see things that I didn't see. He may have seen things that I overlooked because there is a fair bit of material and it is a large bit and there are discrepancies between what I consider sometimes minor discrepancies between what different statements.

Um and then you know-

THE COURT: That's, that's, that's, that's, that's, that's with every case I mean it's, you know people see and hear things differently. In fact the jury is instructed to that effect during the trial. You know two people can look at the same event and you ask them to describe and they're gonna give you a different description. That's not unusual. But you say they're minor I mean so it doesn't sound like anything glaring by that, by those words that were used. All right so at

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least you've had a chance to look into the alibi issue and you've had your investigator look into it? MR. BRECZINSKI: I've been having him look into That's why I got the investigator because there were a number of leads which I quite frankly would have been stretched too thin to do it so I needed somebody to do it for me which is why I got an investigator. THE COURT: Yeah I understand. All right Mr. Pouncy what else did you want to say? If you would stand please? MR. POUNCY: I requested for it 'cause um, my um stepbrother is the one that's implicated me into this situation. Falsely implicated me in this, I requested for um a, a correct picture, may I approach you please? THE COURT: No if you have your lawyer hand it up to me though. Mr. Breczinski, Mr. Breczinski-MR. POUNCY: Man this, tryin' to railroad me man. THE COURT: Mr. Breczinski if you would take

THE COURT: Mr. Breczinski if you would take this item from him and bring it up to me I would appreciate it.

MR. POUNCY: You don't even have proper procedures man that's my life on the line man. And I, that's somebody's that not, you know what I'm sayin' I don't feel comfortable with from day one.

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THE COURT: Now why are you showin' me this
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         picture Mr. Pouncy?
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                   MR. POUNCY: Because I asked him to get a more
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         appropriate picture than from, than that picture you
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         know?
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                   THE COURT: More appropriate picture for what?
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                   MR. POUNCY: For, to be presented you know what
         I'm, to be presented, to be presented in Court or what
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         not.
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                   THE COURT: Now who, who is gonna present your
         picture in Court?
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                   MR. POUNCY: Who, whoever, whoever is
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         representin' or me or whatever, whatever.
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                   MR. BRECZINSKI: That is a picture of whom?
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         You're not explaining what-
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                   MR. POUNCY: Oh that's a picture of my, my
         stepbrother best friend or whatever who be's with him all
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         the time and people mistakes me for him all the time man.
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         And, and that, you know what I'm sayin' I'm usin' that
         because they found a size 11 shoe print at the scene of
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         the crime, the investigator (inaudible) my print up, they
         don't even have that, what, I don't even have the
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         discovery what's all in my packet. All I got was
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         (inaudible) and transcripts.
25
                   THE COURT: Let me just ask, please.
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talked	with	him	about	this	issue	also	I,	I	assume	is	that
correct	:?										

MR. BRECZINSKI: I've talked with him some. Personally that picture looks like an eleven-year old, at least to me-

THE COURT: Yeah.

MR. BRECZINSKI: and that has been shown to Acardo who is supposed to look into this issue also.

MR. POUNCY: But that is a twenty-three year old. That's just a younger picture you know when people pass away-

THE COURT: Mr. Pouncy I, I understand that but let me say somethin' to you okay?

MR. POUNCY: Man I refuse for me to go into Court today Your Honor and I'm not tryin' to be disrespectful-

THE COURT: Mr. Pouncy I'm gonna tell you yes you are. You are bein' disrespectful right now and I'm gonna tell you I'm not gonna tolerate you bein' disrespectful in this Court. Now you're gonna have a choice. You can either sit in that chair and act civilized and go through this process in a civilized manner or I'll have to make other choices. One might be to remove you from this courtroom and have your trial without you even present. The other might be to just tie

you up and gag you right there in the seat and have the jurors to sit here and watch you with a gag in your mouth during the entire trial. But I'm not gonna have you disrupting this Court, you understand that?

MR. POUNCY: Yes.

one, you really don't know what you're talkin' about for the most part okay, just to boil it right down. You think you do and that's part of your problem in my opinion okay? But you don't and you're not gonna come in here and hijack this trial because you're runnin' some game about us railroading you. Nobody's gonna railroad you in this courtroom. There's gonna be witnesses who are gonna have to come in here and get on the stand and testify under oath. So ain't nobody runnin' no monkey type courtroom in this courthouse you understand that?

Are you hearin' what I'm sayin'?

MR. POUNCY: Yes I'm hearing.

THE COURT: All right so then I don't want to hear anything about that 'cause nobody's gonna railroad you okay? Now please have a seat and I really don't think I want to hear anything else from you at this point okay so please have a seat and just be quiet. All right is there anything else we need to do Mr. Breczinski before we get this jury down here?

MR. BRECZINSKI: I, I would state Your Honor that that picture and the name was given to Mr. Acardo as the idea that it wasn't him, it was someone else that looked like him-

THE COURT: I understand.

MR. BBRECZINSKI: and it's basically tied in with the alibi so he was supposed to look into both situations. As far as I know without a written report of everything he did, I don't know that but I assume because of his reputation and past performance that he would have 'cause he's been known to be usually a fairly thorough person.

THE COURT: He is. He's been around for years.

MR. BRECZINSKI: So, you know and so that's been looked into. I haven't heard anything positive to that. That doesn't mean that this person's name can't be brought up. It doesn't mean that, for example, Mr. Grimes can't be cross-examined as to whether it really was this gentleman.

THE COURT: Yes I understand that. All right I understand that. Now, what I want to do at this point before we get the jury down here is I want to discuss what the plea offer is and what the guidelines are so at least Mr. Pouncy understands what's goin' on there and he can't say he didn't have that information before he goes

to trial. So Mr. Larobardiere will you first tell us what is the charges and what are the maximum penalties if you would please?

MR. LAROBARDIERE: Yes Judge. Judge there are eleven counts. Count one carjacking, count two carjacking, count three carjacking, count four armed robbery, count five armed robbery, count six armed robbery, count seven armed robbery, count eight felony firearm, count nine felony firearm, count ten carjacking, count eleven felony possession of a firearm.

> THE COURT: Okay.

MR. LAROBARDIERE: Judge there is a plea offer. He does have two prior felonies.

THE COURT: What are the two priors for?

MR. LAROBARDIERE: They are for-

MR. POUNCY: (Inaudible) no search warrant or nothin'.

THE COURT: Mr. Pouncy I'm gonna ask you to be quiet again okay? Now if you can't be quiet I'm gonna remove you from the courtroom and we're gonna have this trial without you present and then you won't know exactly what went went on in here. So if you want to be here to see what's happenin', then I suggest that you keep your mouth shut. Go right ahead Mr. Larobardiere.

MR. LAROBARDIERE: Judge there are, I'm looking

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for (inaudible) notice. There are two priors. One is for carrying a concealed weapon and I believe delivery of marijuana.

THE COURT: Okay so he's, has the potential of facing a habitual offender third is that what you're tellin' me?

MR. LAROBARDIERE: That's true. And the other is possession of cocaine Judge.

THE COURT: All right so now if he were also convicted of habitual offender third, the carjacking carries life, in fact all of the carjacking offenses carry life, armed robbery carries life of course, felony firearm is two years consecutive and preceding any time done on the underlying felonies and then he's got carjacking which again is a life offense and then a felon in possession which, if he were convicted of habitual offender third, would make that offense not a five-year max but a ten-year max is that correct? It would double the maximum is that correct?

MR. LAROBARDIERE: Yes Judge.

THE COURT: Now what are the guidelines on these offenses, assuming he were convicted of these offenses that are in the information, what would his quidelines be?

MR. LAROBARDIERE: Mr. Breczinski has that

	Judge.					
!	THE COURT:	Would you	tell	me	what	his
	guidelines are Mr. Bre	eczinski?				

MR. BRECZINSKI: You Honor we sat down to, together, Chris and I did and were figuring the guidelines and we figured with habitual third and this was the armed robbery, carjacking alone-

THE COURT: Yeah.

MR. BRECZINSKI: since those are the most serious ones I'd say, we're figuring with the habitual third it's a hundred and thirty-five months to three hundred and thirty-seven.

THE COURT: Three hundred and thirty-seven?

MR. BRECZINSKI: Yes.

THE COURT: All right. Hundred and thirty-five months to three thirty-seven which is really somewhere in the neighborhood of 11.5 years to what, three hundred thirty-seven months is, that's twenty years plus another hundred and thirty-seven months which is probably about another nine years so that's somewhere around almost thirty years isn't it?

MR. BRECZINSKI: Closer to (inaudible) years.

THE COURT: Three hundred and sixty would be thirty years so it'd be about twenty, twenty-eight, twenty-nine years I think.

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MR. BRECZINSKI: Around twenty-eight years.

eleven and-a-half to twenty-eight years, somewhere in that area on the, on the guidelines and so, just so you know Mr. Pouncy what that means is is that if you were convicted of all of the offenses and if you were a habitual offender third and you came in front of me for sentencing, the guidelines say that I should give you a sentence somewhere between eleven and-a-half to twenty-eight, eight years, do you understand that? All right now let's talk about the offer that's bein' made. What is the offer?

MR. LAROBARDIERE: Judge the offer is plea to those eleven counts and no HO for sentencing.

THE COURT: All right and so what would be the guidelines without habitual offender third? What would be his guidelines?

MR. BRECZINSKI: The bottom range is still a hundred and thirty-five and the top it two twenty-five.

THE COURT: Two twenty-five?

MR. BRECZINSKI: That's what we figured them out to be.

THE COURT: All right so he's still lookin' at about eleven and-a-half to almost twenty, almost twenty years.

1	MR. BRECZINSKI: Yes.
2	THE COURT: Is that correct?
3	MR. BRECZINSKI: Correct.
4	THE COURT: All right and-
5	MR. BRECZINSKI: Nineteen years approximately.
6	THE COURT: All right and he's also got the
7	felony, are you asking to plea to the felony firearm as
8	part of the deal Mr. Larobardiere?
9	MR. LAROBARDIERE: Yes Judge.
10	THE COURT: On both, so he would also have that
11	two years on top?
12	MR. LAROBARDIERE: Correct.
13	THE COURT: All right. So really I can see why
14	he might want to go to trial. There's not much
15	difference in terms of the guidelines between the offer
16	and the original charges it sounds like to me.
17	MR. LAROBARDIERE: Well Judge the co-defendant
18	did plead to armed robbery and felony firearm and I think
19	his guidelines are about eight or nine years.
20	THE COURT: And are nine years.
21	MR. LAROBARDIERE: So there's not a lot of
	difference on them.
22	difference on enem.
22	THE COURT: Yeah it sounds like to me I mean

1	and then he can tell me what you want to say. And can
2	you check with Jackie see if our jurors are ready?
3	CLERK: (Inaudible).
4	THE COURT: Are they ready?
5	CLERK: Yeah they're ready.
6	THE COURT: Okay. All right. Okay Mr.
7	Breczinski is there anything else you need to bring to my
8	attention?
9	MR. BRECZINSKI: No Your Honor.
10	THE COURT: Okay and Mr. Pouncy it would be
11	correct that you're not interested in taking the
12	prosecutor's offer is that correct?
13	MR. POUNCY: I will never take the plea to
14	nothin' I did 'cause I didn't do it.
15	THE COURT: Okay then I think we should get
16	ready to have the jury brought down and Trish if you'll
17	go get the jury and we'll start jury selection. I want
18	to ask those of you in the audience if you would step in
19	the hallway for now just until we get the jury selected
20	and then we'll go from there.
21	MR. LAROBARDIERE: Judge I did have, I talked
22	to Mr. Breczinski, I do have a couple of preliminary
23	matters before we do that.
24	THE COURT: What kind of preliminary matters?
25	MR. LAROBARDIERE: A motion in limine regarding

404(b), if he filed a notice about that. There is a case, a separate case that is set for trial in March that involves two witnesses. It's a similar scheme of conduct, similar statements made where another car was carjacked by Mr. Pouncy and those witnesses have identified him and would testify that it was done the same manner, the same words were used similar to this.

THE COURT: And what would be the purpose for admitting, for having this evidence admitted?

MR. LAROBARDIERE: Same, same course, scheme of conduct. It was done in the same way, the same words of Kings Automotive or Kings Garage were used, the same words used in this case. It was done in a similar manner and fashion so the purpose would be for the similar course of conduct or schemed plan.

THE COURT: And what's your comment on that Mr. Breczinski?

MR. BRECZINSKI: Your Honor, I understand that it doesn't necessarily have to be things that they were previously convicted on but in this case they're gonna have a trial later on that, those issues. I don't think they need it and what they've got is they apparently have, you know, a number of people that say this is him for identity and I'm not sure that this is really gonna add anything to the trial or really give, bolster their

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(Judge Archie L. Hayman; 01-24-06; 10:04 a.m.)

case any. This is when we had, before when we had the other case and was arraigned and it was set for the 31<sup>st</sup> we had discussions about instead of do, trying to do something about this, combining them all.

THE COURT: Well the thing is when you're looking at this, at this issue, under 404(b), it's really a uh, a rule of inclusion as opposed to exclusion which means that normally if the prosecution is able to show a legitimate basis for asking to have the evidence brought forth, that the Court ought to allow it in. has to balance it of course under 404, under 403 to determine whether the probative value of the evidence is substantially outweighed by its prejudicial effect and I don't know enough of the details about this other incident to determine whether or not it's similar enough to this incident to allow it in so I think there's going to have to be some offer of proof made before I would be able to rule on this Mr. Larobardiere and what I would suggest is that uh, uh, that uh, have you put this in writing, this motion that you're discussing here? right and it's in the file here? And have you set forth what similarities that you find between the two, between the case that's comin' up the pike and this one here?

MR. LAROBARDIERE: Just that it was done in the

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same manner as the current offense Judge and-

THE COURT: And when you say the same manner, what exactly is the same about it? I heard you say that they, that, when you say this Automotive, what's, why is that significant that that was brought up?

MR. LAROBARDIERE: Offer a little more detail Judge-

> THE COURT: Okay.

MR. LAROBARDIERE: and that, in the 404(b) offense, there was a vehicle for sale, 1972 Monte Carlo and Mr. Pouncy came and looked at that vehicle more than once. On that last occasion looking at it, he took it for a test drive and was in the passenger seat and directed the driver to get out, pull over and, and get out. Before he did that at gunpoint, before he did that he said I want you to take, I want, want to buy the vehicle but I want to check out my mechanic at Kings Automotive. And that's the same M.O., the same steps and circumstances that were done in the current offenses that'll be tried here today.

THE COURT: So these are cars that were taken off a car lot you're tellin' me?

MR. LAROBARDIERE: No these are private for sale vehicles.

THE COURT: Private for sale vehicles, I see

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okay. So he goes to the private home is what you're claiming-

> MR. LAROBARDIERE: Right.

THE COURT: And asks to test drive the vehicle and then does the carjacking when they, they're out in sight, out ridin' in the vehicle-

MR. LAROBARDIERE: Exactly.

THE COURT: and makes the comment that he wants to take it to his mechanic sometime during the discussion at this automotive place?

MR. LAROBARDIERE: True. Now in the 404(b) offense, let me back up. In the current offense before the Court today for trial, the carjacking at, there's the similar comments I want to take it to my mechanic and that is actually done, they go to where he wants the mechanic to look at it and that's where the carjacking The difference in the 404(b) case is that that same comment is made, however the driver, or possess, the person in possession of the vehicle declines to do that. So at that point he tells 'em, he pulls, pulls 'em over at gunpoint wherever they're test driving. So that's the only difference between the 404(b) case and the current offense today.

THE COURT: All right anything else Mr.

Breczinski?

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MR. BRECZINSKI: Um no Your Honor it's, in general broad strokes that is what their claim is.

THE COURT: Well under a 404(b), the prosecutor, when they're making this request, as long as they show a legitimate reason for bringing in the evidence it should be admitted assuming that it meets the test under 403. Here the prosecution is bringing it in for the purpose of, of uh showing identification of the defendant as the perpetrator and that is a legitimate basis to, to utilize that evidence. Under 404, under 403 the question is whether or not the probative value of the evidence is substantially outweighed by its prejudicial It certainly is prejudicial because certainly there is a concern that the jury might feel that well if he committed this crime, that's the one that's coming up the pike, maybe he committed the one that's before us right now. But the probative value is also very significant because it would tend to show that he is the perpetrator and the probative value is significant and I think it does substantially outweigh the prejudicial effect because the jury will certainly be instructed that they cannot assume that because he, he may have been involved in something previously that really he hasn't been convicted of, that he in fact committed this So I think because of that I, I would find that

it is admissible under 404(b) and it is the type of, of uh, of uh matter that ought to be allowed in to establish the defendant's identity on behalf of the prosecution.

So I will grant your motion in limine Mr. Larobardiere and you can prepare an order and make sure that that's in the file that reflects that okay?

MR. LAROBARDIERE: Yes sir.

THE COURT: All right anything else Mr.

## Larobardiere?

MR. LAROBARDIERE: Yes Judge. The other matter is an evidentiary matter and I have is what is a, a tape that I would be moving to admit into evidence and I've let counsel hear this and what it is Judge is a tape recording of a threat of Mr. Pouncy to one of the victims after the actual carjacking and the victims recognized the voice on here and the threats contain don't show up to Court, don't say what I look like, say you don't know me and threats to burn up or blow up their house or something, damage their house in some way.

THE COURT: Now how do you know that that's Mr. Pouncy on the tape?

MR. LAROBARDIERE: The victims first, through these negotiations to, to come look at this vehicle, obviously they talked to him via telephone so when they hear this fairly lengthy message left on the machine,

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they recognize his voice. So that's how they would 1 identify or authenticate that tape and voice. 2 THE COURT: So they're gonna be on the witness 3 stand and they're gonna have the opp, they're gonna be 4 able to identify and verify that that is in fact his 5 voice? 6 7 MR. LAROBARDIERE: True from previous dealings with him on the phone about negotiating this vehicle. 8 THE COURT: All right. 9 10 MR. LAROBARDIERE: And actually have a face to face contact too of course again about the vehicle. 11 THE COURT: All right Mr. Breczinski what's 12 your response to this sir? 13 14 MR. LAROBARDIERE: Judge it, I just, I do have one follow up. I did do some research on this. 15 16 shared this with Mr. Breczinski-THE COURT: Yes. 17 MR. LAROBARDIERE: and what I found was a 18 19 Michigan Supreme Court case, People versus Scholl which says that threats after a crime are generally admissible 20 to show consciousness of guilt and that is for the jury 21 22 to decide the significance of the threat when comparing 23 it to the other testimony in the record.

THE COURT: Yes.

MR. LAROBARDIERE: And I did find another

companion case, had followed up on that. November of '05 a Court of Appeals case Judge that discusses that Scholl case and it says that it's not prejudicial to admit threats that are related to the offense.

THE COURT: All right Mr. Breczinski what do you want to say about this sir?

MR. BRECZINSKI: Your Honor if it was just that we'd be jumping up and down about it. Unfortunately for my client they've also, the, at least the, they've informed me, at least through that that they apparently have the call traced from the, these people, was it the Sandstroms?

MR. LAROBARDIERE: Yes sir.

MR. BRECZINSKI: Sandstroms phone records where it originated from and it apparently originated from the holding room down at the Central District Court and a time-

MR. LAROBARDIERE: Judge that's, I just want to correct him for the record. That's, we did discuss that possibility but we, we won't be offering any proof as to that. It will just be authenticating the voice on the tape from the previous dealings with him.

THE COURT: And what else did you want to say
Mr. Breczinski?

MR. BRECZINSKI: Well I understood from them

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they	apparen	tly tra	aced it	to	the	holding	room	at t	the
Centi	ral Dist	rict Co	ourt.	Is t	chat	correct	? Tha	t's	what
I've	been in	formed	by the	det	tecti	.ve.			

MR. LAROBARDIERE: We were investigating the occurrence of the telephone call Judge and we did think that it was happ, it happened while he was brought over for District Court examination but after talking with the victims and researching the actual date of the recording, that, that's not, that didn't happen. So we wouldn't be offering any proof as to that. Only authenticating it from the victim's dealings with Mr. Pouncy.

THE COURT: Well I'm not sure I'm understanding So you're tellin' me that the phone call was traced to the holding room in the Cen, uh Central District Court, is that what you're tellin' me?

MR. LAROBARDIERE: No Judge. We did initially believe that that's where the telephone call was made and however-

THE COURT: Why did you initially believe that? MR. LAROBARDIERE: Because we believed because he was in custody at the time. But after speaking with the victims and uh-

THE COURT: Let me ask you when you say you traced it, did you trace it by tracing, you know like a trace that they do through a phone line is that what

1	we're talking about?
2	MR. LAROBARDIERE: No there were no traces
3	done.
4	THE COURT: All right so-
5	MR. LAROBARDIERE: We were trying to
6	investigate that possibility. That's what Mr.
7	Breczinski's talking about.
8	THE COURT: So when you say trace, you didn't
9	trace it mechanically-
10	MR. LAROBARDIERE: No.
11	THE COURT: you're tellin' me that you
12	basically made some assumptions or tried to track back.
13	MR. LAROBARDIERE: We were tryin' to track the
14	possibilities where it was placed at.
15	THE COURT: Okay when you use the word tracing
16	I, I was thinking that someone had traced through a line
17	and said well that's where the call came from and that to
18	me seems to me would be significant and ought to be
19	brought before the Court if that was the case whether it-
20	MR. LAROBARDIERE: That's why-
21	MR. BRECZINSKI: I-
22	THE COURT: whether it incriminates him or, or
23	does not incriminate him you know.
24	MR. BRECZINSKI: From what I was told I was
25	under the impression they had contacted the phone company

to find out-

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THE COURT: Yeah that's what I was thinkin' for a minute here but no what you're sayin' is that they surmised somehow that it came from there but not through an electronic trace. And so the way you're gonna establish it basically is by authentication of a person on the witness stand sayin' that they checked the voice is that right?

> MR. LAROBARDIERE: True Judge.

THE COURT: Now is there, was there any way to trace the phone call do you know?

MR. LAROBARDIERE: No that's what we've, that's what I was going to get into. That's what we found out that these phones are not, there are certain cell phones used that are not traceable. That's what was used in this case-

THE COURT: All right.

MR. LAROBARDIERE: (Inaudible).

THE COURT: All right anything else Mr.

Breczinski?

MR. BRECZINSKI: No Your Honor.

THE COURT: All right at this point I would allow you to uh, to uh, to present the tape if you lay a proper foundation for it and you authenticate it okay? Is there anything else Mr. Larobardiere?

MR. LAROBARDIERE: No sir.

THE COURT: Mr. Breczinski anything you need to bring to my attention at this time? Is there anything else Mr. Breczinski? All right gentlemen you're, you're havin' a con, side conversation and I just need to know is there anything else on this issue Mr. Breczinski?

MR. BRECZINSKI: No Your Honor.

THE COURT: All right then I've made my ruling.

Trish go get the jury and let's get started.

(At 10:16 a.m., Court recessed)

(At 10:23 a.m., Court reconvened)

THE COURT: We're on the record in the People of the State of Michigan versus Omar Rashad Pouncy, case number 05-17154-FC. Ladies and gentlemen my name is Archie Hayman. I want to welcome you all here to the Genesee County Circuit Court. I will be the Judge presiding over this matter. I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self government cannot exist without it. The jury is an important part of this Court. The right to a jury trial is an ancient tradition and part of our heritage. The law says that both a person who is accused of a crime and the prosecution have the right to a trial, to have the right

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to a trial not by one person but by a jury of twelve impartial persons. Jurors must be as free as humanly possible from bias, prejudice or sympathy for either Each side in a trial is entitled to jurors who can keep open minds until the time comes to decide the case. A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case. During jury selection the lawyers and I will ask you questions. The questions are meant to find out if you know anything about the case. Also we need to find out if you have any opinions or personal experiences that might influence you for or against the prosecution, the defendant or any witnesses. One or more of these things could cause you to be excused in this particular case even though you may otherwise be qualified to be a juror. The questions may probe deeply into your attitudes, beliefs and experiences. They are not meant to be an unreasonably prying into your private life. requires that we get this information so that an impartial jury can be chosen. If you do not hear or understand the question you should say so. If you do understand, understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

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I would now ask all of the potential jurors to stand and swear to answer truthfully, fully and honestly all the questions that you'll be asked about your qualifications to serve as a juror in this case. If you have religious beliefs against taking an oath, you may affirm that you will answer all the questions truthfully, fully and honestly. You may proceed Mary Lee.

COURT CLERK: Jurors please raise your right Do you solemnly swear or affirm that you will truthfully and completely answer all questions about the qualifications to serve as jurors in this case?

> JURY POOL MEMBERS: I do.

THE COURT: Please have a seat ladies and gentlemen. At this time ladies and gentlemen we're gonna select fourteen individuals to come up and have a seat in this jury box. As we call the names we'll be sending you guys that are hear back to take their seats. And I think we'll start with you guys in the front row will be the first ones to, to go back as we call 'em up one at a time. Mary Lee you may proceed.

COURT CLERK: Juror B63, Marvin Stanford.

THE COURT: Okay Mr. Stanford if you'll come up here to the front row and have a seat and if uh you sir will step out and take his seat. Now was that Stanford or Stafford?

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COURT CLERK: Stanford.

THE COURT: Okay thank you. Okay thank you. And actually you're gonna have to go back this way sir. I know that doesn't, you're gonna have to go back out this way and then walk up where that gentleman is and come all the way up to this seat right here in the front And I apologize I think I did direct you to this witness stand here. My mistake and I apologize for that. And welcome to the Genesee County Circuit Court sir. You may proceed Mary Lee.

COURT CLERK: Juror H275, Diane Romano, R-o-ma-n-o.

THE COURT: Okay and good morning Ms. Romano and if you'll take her seat sir. Thank you. And we want to welcome you also to the Genesee County Circuit Court.

COURT CLERK: Juror H276, Kimberly Rudolph.

THE COURT: Okay, oh Ms. Rudolph, all right. If you'll come down and take the third seat there and we also want to welcome you to the Genesee County Circuit Court.

> COURT CLERK: Juror B68, Rose Wilder.

THE COURT: Good morning Ms. Wilder. If you'll take the fourth seat there and we want to also welcome you to the Genesee County Circuit Court.

COURT CLERK: Juror B47, Donna Fox.

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1	THE COURT: Good morning Ms. Fox.
2	MS. FOX: Morning.
3	THE COURT: We want to welcome you also to the
4	Genesee County Circuit Court.
5	COURT CLERK: Juror B55, Shirley Michael.
6	THE COURT: And good morning Ms. Michael and if
7	you'll have a seat next to Ms. Fox and we also want to
8	welcome you to the Genesee County Circuit Court.
9	COURT CLERK: Juror G214, Diane Banyas, B-a-n-
10	y-a-s.
11	MS. BANYAS: Right here.
12	THE COURT: Okay and you're gonna go right to
13	that seat Ms. Banyas, Banyas. And good morning Ms.
14	Banyas and we want to welcome you also to the Genesee
15	County Circuit Court.
16	MS. BANYAS: Thank you.
17	COURT CLERK: Juror B58, William Nordstrom.
18	THE COURT: And good morning Mr. Nordstrom and
19	we also want to welcome you the Circuit Court sir. Yeah
20	it might be easier to let one, let those off the end
21	start goin' off first and then uh we'll come, yeah that
22	might be better.
23	COURT CLERK: Juror B64, Mary Suski.
24	THE COURT: And good morning Ms. Suski and if
25	you'll, yep you'll have to go up that way, up to the

1.80

1	second row and have a seat next to uh Mr. uh Nordstrom,
2	or excuse me - we need Ms. Suski, where is she?
3	COURT CLERK: She's coming.
4	THE COURT: Oh you're Ms. Suski okay thank you.
5	Yes. All right we welcome you to the Genesee County
6	Circuit Court ma'am.
7	COURT CLERK: Juror B70, Wayne Wright.
8	THE COURT: And good morning Mr. Wright.
9	COURT CLERK: Juror H270, Craig Morris.
10	THE COURT: Good morning Mr. Morris.
11	MR. MORRIS: Morning.
12	THE COURT: And we also would welcome you to
13	the Circuit Court.
14	COURT CLERK: Juror B51, Shelly Labean, L-a-b-
15	e-a-n.
16	THE COURT: And good morning Ms. Labean.
17	MS. LABEAN: Good morning.
18	THE COURT: And we welcome you to the Circuit
19	Court also.
20	COURT CLERK: Juror H254, Dawn Fox.
21	THE COURT: All right and we'll have the lady
22	on the, on the floor here if you'll step up, that's seat
23	number 13. Yeah um hm. And what was her name again?
24	COURT CLERK: Dawn Fox.
25	THE COURT: Okay and good morning Ms. Fox and

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welcome you also to the Genesee County Circuit Court.

COURT CLERK: Juror B54, Kim McPherson.

THE COURT: And good morning Ms. McPherson. also want to welcome you to the Circuit Court. we've got everyone in their right seats, again I want to welcome you all to the Circuit Court. I'm gonna ask those of you that are in the audience to please pay attention to what's going on up here because you may yourself wind up here in the box and if you are brought up I'm not gonna repeat all the questions that I and Mr. Breczinski and Mr. Larobardiere are gonna ask you. simply gonna ask you did you hear the questions that we asked and would you have answered any of those questions any differently and that way we'll hopefully speed the process up a little bit. I want to first start out by telling all of you that are in the jury box that if you'll notice there are cameras on the walls here. They're used to record the proceedings in this courtroom. And sometimes I think when jurors come and they see cameras on the wall they wonder if they're being recorded and I just want you to know that those cameras are not recording you. So at the end of this trial if you were to watch this trial, your face will not be anywhere on this tape so I just want you to know that. The ledge that's in front of the jury box has microphones on it and

that is for the purpose of recording your voices. We do
record your voices as we speak with you so I just wanted
to make you aware of that and Ms. McPherson over there
we, we do know you're over there. I know that you're
kinda in, in nowhere land right now but we do see you
over there okay? I want to start out by asking how many
of you have served on a jury before? If you've served on
a jury before raise your hands. Okay we have a couple
hands. Let's start with you Mr. Stanford. How long ago
did you serve on a jury sir?
MR. STANFORD: At least ten years.
THE COURT: Was that in this courthouse?
MR. STANFORD: No.

THE COURT: Was it in the District Court?

MR. STANFORD: Yes.

THE COURT: Do you remember if it was in the  $68^{\rm th}$  District Court or the  $67^{\rm th}$ ? The one in the City of Flint or, or in one of the townships?

MR. STANFORD: City of Flint.

THE COURT: All right. And do you recall if that was a civil case or a criminal case?

MR. STANFORD: Criminal.

THE COURT: Did you have a chance to deliberate on that case and come back with a verdict?

MR. STANFORD: Yes.

1	THE COURT: Do you recall what your verdict
2	was?
3	MR. STANFORD: Guilty.
4	THE COURT: Was there anything about that
5	experience, having had an opportunity to sit as a juror,
6	deliberate and come back with a verdict, anything about
7	that experience that would affect your ability to be
8	fair, either to the prosecution or to the defendant in
9	this case?
10	MR. STANFORD: No.
11	THE COURT: Anything about that experience that
12	would just make you feel you don't want to participate
13	here today?
14	MR. STANFORD: No.
15	THE COURT: Did the lawyers do anything to
16	offend you at all?
17	MR. STANFORD: No.
18	THE COURT: The Judge do anything to offend
19	you?
20	MR. STANFORD: No.
21	THE COURT: Okay and then I think Ms. Wilder
22	your hand was up is that correct?
23	MS. WILDER: Yeah it was up but I, you know I
24	went all the way but they canceled it. I was-
25	THE COURT: Okay so you had an opportunity to

1	sit-
2	MS. WILDER: To sit-
3	THE COURT: and to listen to the trial but you
4	didn't get an opportunity to deliberate because the case
5	was resolved before you deliberated is that what
6	happened?
7	MS. WILDER: Right.
8	THE COURT: All right do you recall if that was
9	a civil or criminal case?
10	MS. WILDER: No I don't remember 'cause it's
11	been about fifteen to, fifteen to twenty years.
12	THE COURT: Okay was there anything about that
13	experience that would affect your ability to be fair,
14	either to the prosecution or to the defendant in that,
15	this case?
16	MS. WILDER: No.
17	THE COURT: Anything about that experience that
18	sours you against the Court system and just would make
19	you feel you don't want to participate here today?
20	MS. WILDER: No.
21	THE COURT: Did the lawyers do anything to
22	offend you?
23	MS. WILDER: No.
24	THE COURT: The Judge offend you in any way?
25	MS. WILDER: No.

THE COURT: Anyone else ever serve on a jury before? If so raise your hand. All right I believe Mr. Morris your hand was up sir?

MR. MORRIS: Yeah it never went all the way either. It's about, it's about six, seven years.

THE COURT: All right so do you recall if it was in this courthouse?

MR. MORRIS: It was in Flint.

THE COURT: Okay and do you recall if it was a civil or criminal case?

MR. MORRIS: Criminal.

THE COURT: And you had an opportunity to hear the case pretty much through to its entirety but you didn't have an opportunity to deliberate is that correct? Is there anything about that experience that would affect your ability to be fair, either to the prosecution or to the defendant in this case? Anything about that experience that sours you against the Court system and would just make you feel you don't want to participate here today?

MR. MORRIS: No.

THE COURT: Did the lawyers do anything to offend you? Did the Judge offend you in any way? Anyone else ever serve on a jury? Anyone ever been a witness to a, in a case, a lawsuit or a witness in a criminal case?

1	Anyone ever been a witness? If so raise your hand.
2	Anyone else ever serve on a jury? Anyone ever been a
3	witness to a, in a case, a lawsuit or a witness in a
4	criminal case? Anyone ever been a witness? If so raise
5	your hand. Okay we have one hand up and that would be
6	Ms. McPherson.
7	MS. MCPHERSON: Yes.
8	THE COURT: And uh how-
9	MS. MCPHERSON: I was a witness in a drug case.
10	THE COURT: In a drug case. And how long ago
11	would that have been ma'am?
12	MS. MCPHERSON: About two years.
13	THE COURT: All right and do you recall if you
14	testified for the defense or for the prosecution?
15	MS. MCPHERSON: Defense.
16	THE COURT: All right was there anything about
17	that experience that would affect your ability to be fair
18	in this trial to the prosecution or to the defendant?
19	MS. MCPHERSON: No.
20	THE COURT: Anything about that experience that
21	soured you against the Court system and would just make
22	you feel you don't want to participate here today?
23	MS. MCPHERSON: No.
24	THE COURT: Did the lawyers do anything to
25	offend you?

1	MS. MCPHERSON: No.
2	THE COURT: The Judge offend you in any way?
3	MS. MCPHERSON: No.
4	THE COURT: Can, did you find out what the
5	outcome of that case was?
6	MS. MCPHERSON: Yes.
7	THE COURT: All right um were you satisfied or
8	dissatisfied with the outcome?
9	MS. MCPHERSON: Satisfied.
10	THE COURT: All right. Would that have any
11	affect whatsoever in how you would judge this case ma'am?
12	MS. MCPHERSON: No.
13	THE COURT: All right. Anyone else ever been a
14	witness? Okay Ms. Romano and how long ago would that
15	have been ma'am?
16	MS. ROMANO: Almost ten years.
17	THE COURT: All right and did you testify in a
18	civil case or a criminal case?
19	MS. ROMANO: Civil.
20	THE COURT: And did you testify for the
21	plaintiff or the defendant?
22	MS. ROMANO: Defendant.
23	THE COURT: Do you know what the outcome of
24	that case was?
25	MS. ROMANO: Yes.

1	THE COURT: Were you satisfied with the way in
2	which it was resolved?
3	MS. ROMANO: Yes.
4	THE COURT: Do you harbor any ill feelings one
5	way or the other towards anyone that participated in that
6	process?
7	MS. ROMANO: No.
. 8	THE COURT: Can you be fair to both the
9	prosecution and to the defendant in this case?
10	MS. ROMANO: I think so.
11	THE COURT: Would anything, would that
12	experience in any way, shape or form affect your judgment
13	in the case that you would decide here today?
14	MS. ROMANO: No.
15	THE COURT: All right. Anyone else ever been a
16	witness? Anyone ever, ever been a defendant in a, in a
17	case, anyone ever been a defendant? All right Mr. Wright
18	is that correct?
19	MR. WRIGHT: Yep.
20	THE COURT: All right and how long ago would
21	you have been a defendant sir?
22	MR. WRIGHT: About eleven years or so.
23	THE COURT: Okay and was that in Circuit Court
24	or District Court?
25	MR. WRIGHT: Uh 67 <sup>th</sup> I believe.

1	THE COURT: All right so, and that would have
2	involved a misdemeanor case is that correct? Is that
3	correct? All right um did you have a trial in that
4	matter?
5	MR. WRIGHT: Not at the time but eventually
6	yes.
7	THE COURT: So eventually it went to trial?
8	MR. WRIGHT: Yes.
9	THE COURT: And did a jury decide that case?
10	MR. WRIGHT: No.
11	THE COURT: Did a Judge decide it?
12	MR. WRIGHT: Yes.
13	THE COURT: All right. Were you satisfied with
14	the outcome?
15	MR. WRIGHT: Yes.
16	THE COURT: Is there anything about that
17	experience that would affect your ability to be fair,
18	either to the prosecution or to the defendant in this
19	case?
20	MR. WRIGHT: No.
21	THE COURT: Anything about that, did the Judge,
22	did the lawyers do anything to offend you?
23	MR. WRIGHT: Lawyers did not offend me.
24	THE COURT: Judge offend you?
25	MR. WRIGHT: The Judge did offend me.

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(Judge Archie L. Hayman; 01-24-06; 10:38 a.m.)
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                   THE COURT: Um hm and would that in any way
         affect how you would judge this case here today?
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                   MR. WRIGHT: Not at all.
4
                   THE COURT: Could you set that aside and decide
5
         this case just on the evidence that you see here in this
6
7
         courtroom?
                   MR. WRIGHT: Of course I will.
8
9
                   THE COURT: Okay anyone else ever been a
         defendant? Anyone ever been a plaintiff in a lawsuit?
10
         Excuse me uh Ms. uh Suski?
11
12
                   MS. SUSKI: Um, if I'm going through a divorce
         right now, I'm the defendant, does that apply?
13
                   THE COURT: That would qualify yes definitely.
14
         Yeah all right and are you in, still in the process of
15
         going through that right now?
16
17
                   MS. SUSKI: Still in the process.
                   THE COURT: All right um would that affect how
18
         you would judge this case in any way, shape or form?
19
20
                   MS. SUSKI: I don't think so.
                   THE COURT: Okay would you tend to favor one
21
         side or the other because you are, may be a plaintiff or
22
         a defendant in a lawsuit?
23
                   MS. SUSKI: No.
24
25
                   THE COURT: In other words would you have a
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1	tendency to favor either the defendant, the prosecution
2	or the defense because you yourself are a plaintiff or a
3	defendant.
4	MS. SUSKI: Well I, I could identify with the
5	underdog (inaudible).
6	THE COURT: Okay so you feel that you might
7	identify with the underdog because you feel that at least
8	in terms of what you're going through you feel you're
9	getting beat up in the system right now is that correct?
10	Is that a yes?
11	MS. SUSKI: Yes it is.
12	THE COURT: Okay now can you set aside the
13	concerns you have about what you're going through and
14	decide this case just on the evidence that you see in
15	here in this courtroom?
16	MS. SUSKI: I can certainly try.
17	THE COURT: Okay if you were to be selected as
18	a juror do you understand you would be obligated to do
19	that?
20	MS. SUSKI: I understand.
21	THE COURT: All right and that if you couldn't

MS. SUSKI: I understand.

understand that?

THE COURT: Because what these, both sides are

do that you really shouldn't serve as a juror, do you

looking for are fair jurors who can be fair to both
sides.
MS. SUSKI: Well I'll do my best. It may be
tough.
THE COURT: Okay well um obviously you have
some feelings about what you're goin' through and that's
understandable. If you were sitting here listening to
the trial, and let's assume that there was some aspect of
the trial that seemed to be similar to what you're goin'
through. Okay let's put it that way. I doubt that that
would be the case but just assume that were to happen.
Could you set aside your feelings about what you're going
through and just judge the case just on the evidence that
you see in here?
MS. SUSKI: It would be hard-
THE COURT: Okay would you uh, would you-
MS. SUSKI: but I would try.
THE COURT: you would try. And you understand
that that's the fair thing to do?
MS. SUSKI: Yes.
THE COURT: Okay anyone else plaintiff or
defendant? Ms. Banyas?
MS. BANYAS: Yes about, it's been about twenty-
five years ago my boss was accused of mail fraud and
(inaudible) fraud embezzlement. I had to testify against

That was in Federal Court-

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him.

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THE COURT:
                               Yes.
                   MS. BANYAS: in Bay City.
                   THE COURT: All right that was in Federal Court
 4
         and that experience did, did it sour you in any, in any
 5
         way towards the Court system?
 6
 7
                   MS. BANYAS: No.
                   THE COURT:
                               Okay would you have a tendency to
 8
         side with one side or the other because you were a
9
         witness yourself? In other words would you have a
10
         tendency to side with the prosecution or the defense
11
         because you testified for one side or the other?
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13
                   MS. BANYAS: No I, I-
                   THE COURT: And I'm assuming you testified for
14
         the prosecution in that case-
15
16
                   MS. BANYAS: Yes I did.
17
                   THE COURT:
                               is that correct? Okay. Would you
         have a tendency to side then with the prosecution because
18
19
         you testified?
20
                   MS. BANYAS: No not necessarily.
21
                   THE COURT: All right. Can you judge this case
         just on the evidence that you see in here in this
22
         courtroom?
23
24
                   MS. BANYAS: Yes.
                   THE COURT: All right. Were you satisfied with
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1	the outcome of that case?
2	MS. BANYAS: Yes.
3	THE COURT: And I think Mr. Stanford your hand
4	was up sir?
5	MR. STANFORD: Yes. Sued an insurance company.
6	THE COURT: All right and how long ago would
7	that have been?
8	MR. STANFFORD: Two years.
9	THE COURT: Okay were you satisfied with the
10	outcome?
11	MR. STANFORD: Not really.
12	THE COURT: All right do you, do you believe
13	that the fact that the outcome didn't come out as you had
14	hoped it would, did that have anything to do with either
15	the lawyer or the Judge or the Court system in your
16	opinion?
17	MR. STANFORD: No it's just life.
18	THE COURT: Just life okay. All right would,
19	would that experience have any affect on your judgment in
20	this case at all?
21	MR. STANFORD: No.
22	THE COURT: So can you be fair to both the
23	prosecution and the defendant then?
24	MR. STANFORD: Yes.
25	THE COURT: Anyone else? All right coming back
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to Ms. McPherson.

MS. MCPHERSON: I was a defendant in my divorce case and a plaintiff in a case where someone owed me money.

THE COURT: All right were you satisfied with the outcome in both of those cases?

MS. MCPHERSON: Yes.

THE COURT: All right. Can you set aside whatever feelings that you may have had in those cases and decide this case just on the evidence that you see in here?

MS. MCPHERSON: Yes.

and what that means is is that the prosecution has the burden of proof. The prosecution has to prove beyond a reasonable doubt the elements to the charges that are listed in the information, and I'll read the information to you at some point. Does everyone understand that this is a criminal trial and that the burden of proof is beyond a reasonable doubt? Is there anyone that does not understand that? If so raise your hands. No hands are raised. Does, is there anyone who disagrees, who believes that the prosecution should not have the burden of proof in this case and should not have to prove beyond a reasonable doubt the charges that are being brought

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against the defendant in this case, Mr. Pouncy? If you don't believe that is fair for the prosecution to shoulder the burden of proof raise your hand. Okay I see no hands are raised. Do you understand the difference between proof beyond a reasonable doubt in a criminal case and proof by a preponderance of evidence in a civil If you don't understand the difference between those two please raise your hand. Okay and I'm glad a few people raised their hand, that's honest, very good. In a civil case, and again, this is not a civil case, I have, excuse me I have a little conqestion in my sinuses. In a civil case, the plaintiff has the burden of proof. They have to prove by a preponderance of evidence the claims that are being brought. And I think you said you sued an insurance company so in your lawsuit the burden of proof was by a preponderance of evidence. What that means is, and I guess you know as guys we always like to go to the sports as an illustration, but if you were on a football field, the football field is a hundred yards. If you get the football slightly beyond the fifty-yard line, that is a preponderance and it doesn't matter how far beyond the fifty-yard line, as long as the nose of the football gets beyond the fifty-yard line you have preponderated. Or if you have the scales of justice if, if the scales are evenly balance and you just slightly

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tilt the scales in your favor, that is a preponderance of The reason for that is that in a civil case of evidence. course there is not the possibility of your freedom being taken away and so the burden of proof is lower. criminal case the burden of proof is beyond a reasonable doubt and that means that you have to prove beyond a reasonable doubt the claims. And I'm gonna define for you what that means in the instructions as we go along. But what the instructions say basically a reasonable doubt is just that. A doubt that is reasonable after a careful consideration of the facts and circumstances involved in the case. So when we talk about a reasonable doubt, you have to decide do I have a reasonable doubt and if I have a reasonable doubt is that, if I have, do you have a doubt and if that, if I have a doubt is that doubt reasonable? That's really what you're deciding okay? And of course the prosecution has to prove beyond a reasonable doubt. That doesn't mean beyond all doubt but it does mean beyond a reasonable doubt. Does everyone understand that concept now and, and the difference between that and a civil case? All right so you're in a criminal case in this Court in this trial and the proof is beyond a reasonable doubt. There are gonna be many witnesses that'll come before you. officers, experts, lay witnesses that may be people who

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just happened to see something. What I'm concerned about here is that you judge all witnesses by the same standard. And what I mean is that just because somebody has a title you don't say well okay you know that's a police officer so I'm gonna believe him. Or okay that's a doctor so I'm just gonna automatically believe them. But you're gonna look at the evidence, you're gonna look at the testimony and you're gonna consider it in the light of your common sense in deciding whether you believe the witness. Does everyone understand that? In my ri, ridiculous example, which I'll be honest with you, people have asked me to change, I just haven't come up with a better one, but my ridiculous example is this, if the Pope were to walk inside the courtroom and take the witness stand, of course you're gonna want to believe him because he's the Pope. But of course in a Court of law you're gonna have to stop and say okay even though he's the Pope, I've got to listen to his testimony, consider it in the light of all the other evidence and then decide whether I believe him or not. I can't just believe him because he's the Pope. Does everyone understand that? All right. This trial I suspect will last probably about four or five days. And what that means is that you'll be here until five o'clock today, you'll come back tomorrow at eight thirty in the morning and we'll go 'til five

tomorrow. You'll come back on Thursday at probably about
one o'clock and we'll go 'til five and then you'll come
back on Friday and eight thirty and we'll go to five. I
suspect the case will be ended sometime by the end of
this week. Knowing that that's the possible schedule,
and I will let you out at five by the way, you won't be
here beyond five o'clock just so you know, knowing that
that's the possible schedule, does it create a hardship
for any of you to serve on this jury? If so raise your
hands. Okay I've got a few hands up. Let's take 'em one
at a time. Mr. Stanford it would be a hardship for you
to serve sir?

MR. STANFORD: My wife has breast cancer in her lugs and I'm her primary care. I've got somebody with her today but I take care of her most of the time.

THE COURT: Okay and there's no one else to take care of her?

MR. STANFORD: No.

THE COURT: Okay. All right well I'm gonna excuse you then Mr. uh, um-

MR. STANFORD: Stanford.

THE COURT: Stanford and if you would go to the second floor they'll let you know what you need to do and I'll prey for you and for your wife sir. All right you may leave at this time. And Trish, I mean Mary?

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THE COURT: Good morning Ms. Hawkins. And if you'll come and take the seat that's been vacated by Mr. Stanford. And we welcome you also to the Genesee County Circuit Court Ms. Hawkins. You've heard the questions that I've asked up to this point is that correct? Would you have answered any of those questions any differently than the rest of the jury as a whole?  Ms. HAWKINS: No. THE COURT: Can you be here with us for the time that I've indicated?  Ms. HAWKINS: Well I was supposed to go get my daughter Friday from college but- THE COURT: Okay what time did you have to go get her?  Ms. HAWKINS: About ten o'clock in the morning. THE COURT: Okay. Is there anyone else that can go get her?  Ms. HAWKINS: No. THE COURT: Okay is it possible to get her a different time or a different day?  Ms. HAWKINS: Well now I guess I'll have to. THE COURT: Okay. Is there any other reason why you can't serve?	1	COURT CLERK: Juror H258, Cheryl Hawkins.
Stanford. And we welcome you also to the Genesee County Circuit Court Ms. Hawkins. You've heard the questions that I've asked up to this point is that correct? Would you have answered any of those questions any differently than the rest of the jury as a whole?  MS. HAWKINS: No. THE COURT: Can you be here with us for the time that I've indicated?  MS. HAWKINS: Well I was supposed to go get my daughter Friday from college but- THE COURT: Okay what time did you have to go get her?  MS. HAWKINS: About ten o'clock in the morning. THE COURT: Okay. Is there anyone else that can go get her?  MS. HAWKINS: No. THE COURT: Okay is it possible to get her a different time or a different day?  MS. HAWKINS: Well now I guess I'll have to. THE COURT: Okay. Is there any other reason	2	THE COURT: Good morning Ms. Hawkins. And if
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11 time that I've indicated?  12 MS. HAWKINS: Well I was supposed to go get my 13 daughter Friday from college but- 14 THE COURT: Okay what time did you have to go 15 get her? 16 MS. HAWKINS: About ten o'clock in the morning. 17 THE COURT: Okay. Is there anyone else that 18 can go get her? 19 MS. HAWKINS: No. 20 THE COURT: Okay is it possible to get her a 21 different time or a different day? 22 MS. HAWKINS: Well now I guess I'll have to. 23 THE COURT: Okay. Is there any other reason	9	MS. HAWKINS: No.
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THE COURT: Okay. Is there any other reason	21	different time or a different day?
	22	MS. HAWKINS: Well now I guess I'll have to.
why you can't serve?	23	THE COURT: Okay. Is there any other reason
	24	
MS. HAWKINS: No.		why you can't serve?

1	THE COURT: I think that reason I would keep
2	you here unfortunately. And I just want you to know
3	don't blame it on these parties, blame it on me okay?
4	'Cause I'm the one that's keepin' you okay? Can you be
5	fair to both the prosecution in this case?
6	MS. HAWKINS: Yes.
7	THE COURT: Is there any reason you can think
8	of why you shouldn't serve ma'am?
9	MS. HAWKINS: No.
10	THE COURT: Okay I think I had another hand up
11	in the front row. Okay let's go to you Ms. Wilder.
12	MS. WILDER: It would be for today 'cause I
13	probably could get someone to pick up my children. I'm a
14	foster parent-
15	THE COURT: Okay.
16	MS. WILDER: and I have children that I've got
17	to pick up from school.
18	THE COURT: And what time do you have to pick
19	them up ma'am?
20	MS. WILDER: Three thirty.
21	THE COURT: At three thirty? All right and
22	after that you would be available is what you're tellin'
23	me is that correct? Okay I'm gonna hold on to you for
24	right now okay?
25	MS. WILDER: All right.

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THE COURT: Anyone else? Okay let's go over to
1
         the back row. Your hand is up Ms. Banyas?
2
                   MS. BANYAS: I'm a contingency employee at
3
         Genesys which means that if I don't work I don't get paid
4
         so you know if I was, if I was here (inaudible).
5
                   THE COURT: It would create a financial
6
7
         hardship.
                   MS. BANYAS: Well I mean I wouldn't, you know
8
         not a huge hardship for anybody but-
9
                   THE COURT: Now you're talking yourself out.
10
         If that's the case I might keep you. Now so are you
11
         tellin' me it's not gonna cause a huge financial hardship
12
         but it would be a, some hardship?
13
                   MS. BANYAS: Right.
14
                   THE COURT: Okay. You would keep your job I
15
         would assume-
16
                   MS. BANYAS: Yes.
17
                   THE COURT: because you're serving on the jury.
18
19
                   MS. BANYAS: Yes.
20
                   THE COURT: All right but they just don't pay
         you is that what you're tellin' me?
21
22
                   MS. BANYAS: Yes um hm.
23
                   THE COURT: All right. If I were to require
         you to stay, would it, would it make a big disruption in
24
         your life is what I guess I need to know?
25
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1	MS. BANYAS: Um no I guess not big.
2	THE COURT: All right if I required you to stay
3	would you blame me, not the prosecution or the defendant
4	in this case?
5	MS. BANYAS: Um I would probably blame you.
6	THE COURT: Okay that's good and during the
7	trial would you be able to pay attention and keep, and,
8	and keep your attention on the trial even though you may
9	have some concerns about you know your, your job
10	situation?
11	MS. BANYAS: Yes uh huh.
12	THE COURT: Okay. All right I may come back to
13	you just let me think about that for a second okay?
14	Anyone else that had their hand up? Okay Mr. Wright is
15	that correct?
16	MR. MORRIS: Morris.
17	THE COURT: Uh Morris, excuse me. Mr. Morris?
18	MR. MORRIS: Today I uh, I got up yesterday at
19	about noon, I work third shift-
20	THE COURT: Yes sir.
21	MR. MORRIS: and I don't think I can make it to
22	five o'clock.
23	THE COURT: All right that's understandable.
24	So you work third shift is what you're tellin' me and you
25	haven't had a chance to sleep?

1	MR. MORRIS: No.
2	THE COURT: Now um assuming that you were here
3	from the days forward, let's assume you knew you were
4	gonna be here from here on out, would you go to work
5	tonight?
6	MR. MORRIS: No.
7	THE COURT: Okay and does your employer pay you
8	for the time you're here? Okay who do you work for?
9	MR. MORRIS: GM.
10	THE COURT: All right General Motors. Okay. I
11	think we're gonna hold on to you for right now.
12	MR. MORRIS: Okay.
13	THE COURT: I understand your sleep situation-
14	MR. MORRIS: Just pick me up-
15	THE COURT: yeah I understand-
16	MR. MORRIS: if I fall out of the chair.
17	THE COURT: yeah I understand. All right and
18	anyone else's hand up? Ms. McPherson?
19	MS. MCPHERSON: Well I'm a teacher and I would
20	hate to be gone out of my classroom any longer.
21	THE COURT: All right and what grade do you
22	teach ma'am?
23	MS. MCPHERSON: First.
24	THE COURT: Okay and do they have someone who
25	substitutes for you?

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MS. MCPHERSON: Yes.

THE COURT: Okay I'm gonna hold on to you too unfortunately. I recognize it, it's, anytime anyone serves there's always some inconvenience. I recognize I'm concerned of the more, about the more serious ones because I think everyone has an obligation to serve. We even have Judges in this courthouse who have had to serve and they've had to just stop whatever they were doing and, and serve on a jury and let all their cases pile up during that time so we all have to sacrifice to some extent for this system to exist. So now with respect to you Ms. Wilder um, my thinkin' is is that I, I'm probably gonna hold on to you although I probably would have to let you go in time to go get your kids today so it's possible it could affect whether we go all day today. Um so we'll see how things play out with that okay? I may change my mind later but right now I think I'm gonna hold you okay? Ms. Banyas I'm gonna let you go because I'm concerned about the financial hardship. know that you've indicated it may not be that difficult but four days' pay is, in my opinion a lot of money, in my opinion okay, and what I'm gonna suggest is that you come back at a time when you can serve and when you might be in a better position to serve okay? So when you go to the second floor let then know that now is not a good

1	time for you to serve but you can come back at another
2	time and maybe if you could let them know what that time
3	might be, they'll then have you come back then okay?
4	MS. BANYAS: Okay.
5	THE COURT: Thank you ma'am.
6	MS. BANYAS: Thank you sir.
7	THE COURT: You may go to the second floor.
8	Mary you can put someone in Ms. Banyas' seat.
9	COURT CLERK: Juror B50, Carissa Klonowski?
10	MS. KLONOWSKI: Yeah.
11	COURT CLERK: K-l-o-n-o-w-s-k-i.
12	THE COURT: Klonowski is that how you pronounce
13	it?
14	MS. KLONOWSKI: Klonowski correct.
15	THE COURT: All right good morning Ms.
16	Klonowski. I didn't design that jury box and if I had I
17	probably would have made it wide enough to drive a car
18	through it because those rows are very tight. Ms.
19	Klonowski I want to welcome you to the Genesee County
20	Circuit Court and you've heard the questions that I've
21	asked up to this point is that correct?
22	MS. KLONOWSKI: I have.
23	THE COURT: Can you be here with us for the
24	time that I've indicated?
25	MS. KLONOWSKI: I cannot.

1	THE COURT: All right and explain.
	_
2	MS. KLONOWSKI: I work for a place where
3	there's only three of us that work and so it would create
4	hardship financial wise for me to miss.
5	THE COURT: Okay so they, they don't pay you
6	for the time that you're off ma'am? Okay and you said
7	there's only three of you so they don't have substitutes
8	to cover for you?
9	MS. KLONOWSKI: No. Today they are. The two
10	women that work have children so for them to cover my
11	shift it's really hard for them as well.
12	THE COURT: All right and I'm gonna excuse you
13	Ms. Klonowski and if you'll let them know when you can
14	come back and serve 'cause you'll have to come back and
15	serve at some point but maybe there's a more convenient
16	time for you to be back here okay?
17	MS. KLONOWSKI: Okay.
18	THE COURT: Go right ahead uh Mary Lee.
19	UNIDENTIFIED PERSON: (Inaudible).
20	THE COURT: Yeah this is the hot seat I think
21	right now.
22	COURT CLERK: Juror B71, Patricia Zak, Z-a-k.
23	THE COURT: And good morning Ms. Zak.
24	MS. ZAK: Good morning.
25	THE COURT: And if you'll take the seat that's

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been vacated by Ms. Klonowski. And we want to welcome you also Ms. Zak to the Genesee County Circuit Court. You've heard the questions that I've asked up to this point is that correct? Would you have answered any of those questions any differently than the rest of the jury panel as a whole?

> MS. ZAK: Um hm.

THE COURT: Can you be here with us for the time I've indicated?

MS. ZAK: We are leaving Sunday for five weeks.

THE COURT: Okay that shouldn't be a problem. If we don't have the case finished by Friday we'll always have two extras so we could always still make sure that you make that flight if it has, if it comes down to that okay?

> MS. ZAK: Yes.

THE COURT: And let me just ask counsel do either of you expect the case to go beyond this week at I mean I don't expect it to. Okay. all?

MR. BRECZINSKI: No.

THE COURT: So beyond Friday but if for some reason unforeseen it does, you remind me and I will excuse you okay? All right. So any other reason that you can't serve? Can you be fair ma'am to both the prosecution and the defendant in this case?

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MS. ZAK:
                             I think so.
1
                   THE COURT: I'm sorry I didn't hear you?
2
                             I think so.
                   MS. ZAK:
3
                   THE COURT:
                               Okay. Is there any reason you can
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5
         think of why you shouldn't serve?
                   MS. ZAK: No because I-
6
                   THE COURT: Okay, I'm sorry?
7
                   MS. ZAK: have a, have family members in law
8
         enforcement.
9
                   THE COURT: Okay well we'll get to that.
10
         right I'm glad you brought that up. Let's ask that
11
         question then. Are there any members of the jury who
12
         have family in law enforcement? If so raise your hands.
13
         Okay looks like just you Ms. Zak okay and who do you have
14
         that's a family member that's a-
15
16
                   MS. ZAK:
                             My son.
                   THE COURT: Your son? And who does he work for
17
         ma'am?
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19
                   MS. ZAK: Genesee County.
20
                   THE COURT: Is it the Sheriff's Department?
                   MS. ZAK:
21
                             Yes.
                   THE COURT: All right and uh you know I thought
22
         I'd seen that name before. And does he work here in the
23
         courthouse or in the jail or on the road?
24
                   MS. ZAK: Paramedic on the road.
25
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1	THE COURT: Paramedic on the road. Okay um
2	does he talk to you about what he does ma'am?
3	MS. ZAK: Oh sometimes.
4	THE COURT: All right would that, what he talks
5	to you, the things that he talks to you about, would if
6	affect your ability to be fair in this case?
7	MS. ZAK: I don't think so.
8	THE COURT: Let's assume that you sat as a
9	juror in this case and you went through this entire trial
10	and you believe that the prosecution failed to prove
11	beyond a reasonable doubt Mr. Pouncy is guilty of the
12	offenses that are in the information here. Can you come
13	back with a verdict of not guilty?
14	MS. ZAK: I think so.
15	THE COURT: All right and would you have any
16	concern that when you went on the road and, or, or went
17	and saw your son and he talked to you and you said well I
18	was on the Judge, a jury trial in Judge Hayman's Court
19	and I found the defendant not guilty. Do you have any
20	concerns that he might have somethin' to say to you about
21	that?
22	MS. ZAK: Oh probably.
23	THE COURT: All right but do you have any
24	concern about that?
25	MS. ZAK: No.

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THE COURT: I mean can you look him in the eye and say hey I sat there and listened to the trial-MS. ZAK: Oh yeah definitely.

THE COURT: and as far as I'm concerned the prosecution didn't prove beyond a reasonable doubt Mr. Pouncy is guilty and therefore I voted not guilty. you look him in the eye and tell him that?

MS. ZAK: I think so.

THE COURT: All right and let's assume that you sit and listen to this trial and you felt the prosecution proved beyond a reasonable doubt Mr. Pouncy was quilty. Can you come back with a verdict that reflected that? MS. ZAK: Yes.

THE COURT: All right and I'm, and I'm talkin' to you but actually I'm talkin' to everybody. So all right anyone would disagree with the responses that Ms. Zak gave? Anyone that would disagree with that at all? If so raise your hand. Okay no hands are raised. to, at this time, ask you what each and everyone of you, what's your highest level of education is and what your occupation is. And we'll start in the front row with you Ms. Hawkins your highest level of education and occupation please?

MS. HAWKINS: Associates Degree from Baker and a physical therapy assistant.

1	THE COURT: All right and Ms. Romano?
2	MS. ROMANO: I have a bachelor's degree and I'm
3	a substance abuse counselor.
4	THE COURT: All right and what did you get your
5	bachelor's degree in ma'am?
6	MS. ROMANO: Criminal justice.
7	THE COURT: All right and Ms. Rudolph?
8	MS. ROMANO: I've got a bachelor's degree in
9	liberal arts and I'm a camp director.
10	THE COURT: I'm sorry.
11	MS. ROMANO: I'm a camp director.
12	THE COURT: Camp director all right thank you.
13	And Ms. Wilder?
14	MS. WILDER: Twelfth grade graduate. One year
15	of college. Foster adoptive mom, retired.
16	THE COURT: All right and what did you retire
17	from ma'am?
18	MS. WILDER: General Motors.
19	THE COURT: GM. All right and what did you do
20	for GM?
21	MS. WILDER: I was a stock chaser-
22	THE COURT: Okay.
23	MS. WILDER: and a job setter.
24	THE COURT: All right and Ms. Fox?
25	MS. FOX: I'm a medical assistant for a OBGYN

1	practice.
2	THE COURT: And your highest level of
3	education?
4	MS. FOX: High school and I did go to um, I
5	didn't mark it, I didn't know how to mark it on the slip,
6	it was considered a trade school so it's not really a, a
7	degree per se as far as a science degree or a bachelor's
8	degree-
9	THE COURT: Okay.
10	MS. FOX: for a medical assistant.
11	THE COURT: So a medical school as a medical
12	assistant.
13	MS. FOX: Medical, Ross Medical School.
14	THE COURT: Ross Medical okay.
15	MS. FOX: Yes sir.
16	THE COURT: And Ms. Michael?
17	MS. MICHAEL: I went to the eleventh grade and
18	I'm a retired drywall finisher.
19	THE COURT: All right and we'll come back up
20	here to Ms. Zak.
21	MS. ZAK: Um one year of college, I'm retired.
22	THE COURT: And what are you retired from
23	ma'am?
24	MS. ZAK: Um banking.
25	THE COURT: Banking all right. And Mr.

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Nordstrom?
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                   MR. NORDSTROM: Bachelor's degree and I'm a
2
         retired school teacher.
3
                   THE COURT: And what did you teach in school
4
5
         sir?
                   MR. NORDSTROM: Business.
6
                   THE COURT: Business all right. And Ms. Suski?
7
                   MS. SUSKI: I have a bachelor's in business
8
         administration and I'm a self-employed freelance website.
9
         designer.
10
                   THE COURT: All right very good. And Mr.
11
         Wright?
12
                   MR. WRIGHT: First year of college, unemployed
13
         at the moment.
14
15
                   THE COURT: All right and Mr. Morris?
                   MR. MORRIS: Graduated from high school-
16
                   THE COURT: All right and you're-
17
18
                   MR. MORRIS: twelfth grade.
19
                   THE COURT: and you're GM, I think you work at
         GM is that correct?
20
                   MR. MORRIS: Yes.
21
22
                   THE COURT: All right and Mr. Wright I just
23
         want to back up with you just for a second and what did
24
         you study in college sir?
25
                   MR. WRIGHT: General classes, computers mostly.
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(Judge Archie L. Hayman; 01-24-06; 11:01 a.m.)
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                   THE COURT: Computers? All right.
                   MR. WRIGHT: Computer studies.
3
                   THE COURT: All right and Ms. La, Labean?
4
                   MS. LABEAN: High school diploma and I'm a
5
         secretary in the automotive industry.
7
                   THE COURT: All right and then coming down to
         you Ms. Fox.
8
9
                   MS. FOX: High school and I'm the inbound
         operations assistant for Rite Aid in the receiving-
10
                   THE COURT: Okay.
11
12
                   MS. FOX: department.
                   THE COURT: All right and Ms. McPherson?
13
                   MS. MCPHERSON: I have a bachelor's degree in
14
         education plus graduate hours.
15
                   THE COURT: All right and you're a teacher is
16
17
         that correct?
                   MS. MCPHERSON: Yes.
18
19
                   THE COURT: A first grade teacher?
20
                   MS. MCPHERSON: Yes.
21
                   THE COURT: All right thank you. Um let's see
         I think I'm just about done. I wanna go over you with,
22
         go over with you the list of potential witnesses and I
23
         will first start by introducing you to the people who are
24
25
         seat, seated here at counsel table. And representing Mr.
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1	Pouncy is defense attorney Michael Breczinski and Mr.
2	Breczinski if you would stand so the jurors can see who
3	you are sir?
4	MR. BRECZINSKI: Good morning ladies and
5	gentlemen.
6	THE COURT: And the accused in this case is Mr.
7	Omar Rashad Pouncy and Mr. Pouncy would you stand so the
8	jurors can see who you are sir?
9	MR. POUNCY: Morning to you.
10	THE COURT: And representing the People of the
11	State of Michigan is Christopher Larobardiere, Mr.
12	Larobardiere would you stand so they can see who you are?
13	MR. LAROBARDIERE: Morning.
14	THE COURT: And if you would introduce the
15	officer in charge with, with you sir?
16	MR. LAROBARDIERE: Detective Jim Volardie.
17	MR. VOLARDIE: Morning.
18	THE COURT: Now do any of you recognize any of
19	the individuals seated here at counsel table? If so
20	raise your hands. Okay I see no hands are raised. I
21	want to now go over the list of potential witnesses
22	that'll be called in this case and I want you to
23	understand, these are potential witnesses. Not all these
24	witnesses will be called, but we just want to see if you
25	recognize any of the names. Wayne Grimes, Thomas

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Sandstrom, Patrick Wendell, Officer Jill Phillips, Officer Edwards, Joseph Davis, Willie McKinley, Sergeant David Dwyer, Lieutenant Kevin Shanilan, Sam Anderson, Tiaqua Leondess, Terrell Pierce, Maria Sandstrom, Detective Steve Warda, Officer Bob Farmer, Officer Chris Watts, Alan Dietrich, Charles Smith, Jr., Willie Joyce, Timothy Moore, Dan Haynes, Detective Jim Gagliardi, Earl Brady, Officer Randy Yont, Officer James Williams, Sergeant George Thomas, Jason Hickey, Agent Jeff Lowe, Sergeant Meoachy Proby, Detective Shawn Duncanson, Sergeant Sharon Dunbar. Do any of those names sound familiar to any of you and if they do please raise your hand. I see no hands are raised. Let's see is there anything else I need to cover? Um one other thing. As jurors, it will be your responsibility to decide the facts of this case, that's what jurors are here for. is the Judge's responsibility to instruct you as to the law and to run the case in a fair and efficient manner. Your job is to decide the facts of this case. You decide whether they ran the red light or did not run the red Anything you decide about a fact is final. anyone here have any religious beliefs, personal beliefs that would preclude them from making those kinds of judgments? If so raise your hand. I see no hands are With that then Mr. Larobardiere I'll allow you

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to proceed sir.

MR. LAROBARDIERE: Thank you Judge. Morning ladies and gentlemen and welcome. Thank you again for making time, I know everybody has a schedule, work and family and foster kids and a lot of juggling goes into, to coming here today and I appreciate you making those arrangements. My name is Chris Larobardiere, I'm an assistant prosecutor assigned to try this case today and Detective Jim Gagliardi of the Mt. Morris Township Police Department. I, we have your questionnaires and as the Judge said they're not meant to be probative or impersonal, it just gives us an idea of, of where you come from. We have truly a group of people from numerous cross-sections of our community and that's what we want. We use the questionnaires to, to ask you a few questions in order to get an impartial jury to both sides okay? And once that's done, those questionnaires are taken away because some people wonder you know if I fill this out and I'm puttin' personal stuff on here what happens to It's taken away by the clerks not to be seen again it? so when we're done with this we're done with those (inaudible). I do have a few questions to follow up on some of what the Judge said and I'll, I'll, the Judge asked about law enforcement and I'll take it a step fur, further on police contacts. All of us have probably been

stopped by the police or know somebody who's stopped by
the police or arrested and things like, of that sort.
Some of you indicated you had some contact with the
police. Does anyone have any strong feelings or
attitudes for whatever reason towards the police,
positive or negative? No hands are raised and I don't
mean to single you out Mr. Wright but I'd ask you a
little more questions about, you indicated you did have a
case in District Court is that right?
MR. WRIGHT: Yes sir.
MR. LAROBARDIERE: Okay what was the charge?
MR. WRIGHT: Zero, first person in Michigan
under the zero tolerance law.
MR. LAROBARDIERE: Okay possession of alcohol?
MR. WRIGHT: Yes for under, someone under
twenty-one.
MR. LAROBARDIERE: Okay. All right so you were
a juvenile, or you were under eighteen?
MR. WRIGHT: No I was eighteen.
MR. LAROBARDIERE: Eighteen. All right. Okay.
And that's a misdemeanor in a misdemeanor Court and I
think you heard you say you were okay with the way the
attorneys handled things but you were a little upset with
the Judge?
MR. WRIGHT: Yeah.

1 (1)

1	MR. LAROBARDIERE: Was that, did that have to
2	do with the punishment?
3	MR. WRIGHT: No more personal attitude person.
4	MR. LAROBARDIERE: Okay. Did you feel the
5	Judge treated you unfairly then?
6	MR. WRIGHT: I think she tried to make an
7	example. Instead of following the law she (inaudible)
8	her own opinions into it.
9	MR. LAROBARDIERE: All right. Okay.
10	MR. WRIGHT: I just pleaded no contest 'cause
11	that's how I thought I should have done it then.
12	MR. LAROBARDIERE: Okay. All right well as you
13	know you're in Circuit Court and this is gonna be a
14	felony case and it doesn't have anything to do with
15	alcohol okay?
16	MR. WRIGHT: (Inaudible).
17	MR. LAROBARDIERE: Knowing that, knowing your
18	experience is, that's done and in the past for you, um,
19	or do you harbor any hard feelings towards the police or
20	the Court system or the Judge?
21	MR. WRIGHT: I wouldn't say that that
22	particular Judge is my favorite person in the world but I
23	don't think about her daily or anything-
24	MR. LAROBARDIERE: All right.
25	MR. WRIGHT: really.

1	MR. LAROBARDIERE: From your experience would
2	you associate with either the prosecution's side or the
3	defense side for whatever reason?
4	MR. WRIGHT: I couldn't answer that on what, it
5	depends on what circumstances you're talkin' about.
6	MR. LAROBARDIERE: Well what I'm askin' is
7	would, would-
8	MR. WRIGHT: I've also had traffic violations
9	before too so-
10	MR. LAROBARDIERE: okay um it's along the same
11	line of questions then, would you tend to favor then the
12	prosecutor or favor the defense because of your
13	experience?
14	MR. WRIGHT: I'd have to say it depends on the
15	evidence, the circumstances. I'm unbiased to begin with.
16	MR. LAROBARDIERE: All right let me take it a
17	step further then.
18	MR. WRIGHT: Okay.
19	MR. LAROBARDIERE: Because evidence will be
20	presented and you'll be the fact finder of the evidence
21	and what everybody's gonna do today is bring their common
22	sense through your many years of experience in our
23	community you're gonna bring that in and when you hear
24	that evidence you're gonna use that common sense and
25	evaluate the evidence. Fair enough?

MR. WRIGHT: Exactly.

MR. LAROBARDIERE: So you don't leave your common sense at the doorway is what I'm gettin' at there.

MR. WRIGHT: Yeah. I don't have no personal vendetta or anything.

MR. LAROBARDIERE: Okay um and after that you're gonna hear evidence presented at the, the chair okay? What the attorneys say is not evidence but what comes from the witness chair and it's gonna be both direct evidence and circumstantial evidence and as long as you hear enough evidence that is beyond a reasonable doubt then would you have any trouble conducting, based on your experiences in the Court system?

MR. WRIGHT: Not at all.

MR. LAROBARDIERE: All right. Thank you. I didn't mean to single you out, I just had to ask a few more questions here. I'd like to follow up a little more about religion and I don't mean to single out any religion but the question as a follow up to Judge Hayman is this. You will be the fact finders in the case. You will hear the evidence and in the end you will have to render a judgment. Does anyone have any strong religious beliefs that say I'm not really supposed to render a judgment. I'm not supposed to judge another man or woman? Does anyone feel that way? Does everyone think

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they can comply with their duty as a jury to render a judgment after you hear all the evidence? Okay I see some heads shaking yes and none for don't. Common sense again and reasonable doubt. Reasonable, reasonable doubt is the burden that the prosecutor has to meet. reasonable doubt does not mean beyond any doubt, does everyone understand that? Okay? Because if it was beyond any doubt, we would have to have a video tape or, or things of that sort of the crime. Does everyone understand that? Okay? But it's a, a doubt based on common sense. Something that violates common sense is what I like to say. Does anyone think that that's fair? Does anything think that no it should be higher, it should be, you know, it shouldn't be any doubts. anyone feel that way? Raise your hand. When you hear the facts in evidence, you may develop some questions along the way. Now Judge Hayman doesn't let jurors ask questions and that, for, that's a procedural reason. You're the fact finders okay? And the evidence will be presented from the chair. There will be testimonial evidence and there will be documentary evidence okay? Exhibits, things that you can take back with you okay? Now a trial is not gonna answer all your questions here today I'll tell you that. That some of you, when you're done and you're able to discuss a case you know you may

have some questions. And a trial presumably was not
gonna answer all your questions. Now if someone has a
question after hearing the evidence, is that gonna cause
you a problem? Are you gonna say, you know what, this
wasn't covered and I have a question and because I have a
question, I cannot render judgment. Does anyone feel
that way? Raise your hand. Let's talk a little bit
about bias and prejudice and sympathy. Now you all
indicated you have various jobs and of course come from
various cross-sections of our community. Bias, prejudice
and sympathy have got nothing to do with this case and
have no place in this courtroom okay? Some of you, I
don't mean to single out, have what I'll call helping
professions. You might be teachers, um is somebody a
guidance counselor?
MC DONGNO NO T T

MS. ROMANO: No I was, I was um-

MR. LAROBARDIERE: Camp Director?

MS. ROMANO: yeah but I also was um a ther, a therapist for (inaudible) with somebody.

MR. LAROBARDIERE: Okay for delinquent juveniles?

MS. ROMANO: Um hm.

MR. LAROBARDIERE: Okay um and Ms. Maron, Mar-

MS. ROMANO: Romano.

MR. LAROBARDIERE: Romano, sorry, and you deal

with substance abuse true?

MR. ROMANO: Yes sir.

MR. LAROBARDIERE: Okay so those inevitably are, you're tryin' to help people correct some behavior true?

MS. ROMANO: True.

MR. LAROBARDIERE: Okay uh and I thank you for being in those professions, those are, those are very necessary professions. I'm in the responsibility business okay? And I'm, I want people to take responsibility and that's why I'm the prosecutor okay so I'm not saying we have differences of opinions but my concern is if you're in a helping position, profession, do you feel that you might have some sympathy or bias, or not bias but sympathy or empathy for a person facing trial? All right you're shaking your head. May I have your name?

MS. RUDOLPH: Pardon?

MR. LAROBARDIERE: You're shaking your head so-

MS. RUDOLPH: Yeah Ms. Rudolph.

MR. LAROBARDIERE: Rudolph. I'm sorry Ms.

Rudolph so you kind of would, would have an understanding of their going through trial and facing some difficult times true? Um because of your training or your experience within the system, do you think you would

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develop a bias or sympathy towards the defense? MS. RUDOLPH: Yes.

MR. LAROBARDIERE: Okay. And that undoubtedly would be difficult to overcome based on your, your current profession and your previous dealings with, with people with troubled behavior?

MS. RUDOLPH: I think when you're talkin' about It's not like I would be dependent upon facts. And I guess when you said like the thing about asking questions you know, it's just kind of like you want to cover all the bases, it's the bein' thorough, I would like to be thorough before.

MR. LAROBARDIERE: All right. Okay. And what we have to uh, what I have to do as a prosecutor is we have elements of the crime and (inaudible) we, you all the elements of the crime and as long as those elements are met the jurors have a duty to render judgment okay? So that's what you'd be evaluating so even though you may have some questions, as long as the elements of the crime that should be sufficient is what I, the prosecutor argues okay? Um but you, you do feel that based on your uh, your training or your job in dealing with troubled people uh you may develop some sympathy towards the defense true enough? Thank you for being candid.

THE COURT: Have to have a verbal response

ma'am.

MS. RUDOLPH: Yes.

THE COURT: Thank you.

MR. LAROBARDIERE: Thank you for being candid.

THE COURT: And let me just follow up on that just for a second. First of all certainly you wouldn't be human if you didn't have human feelings okay? And we understand that everybody brings feelings, and I guess you, whether you call it prejudices, biases, sympathies, everyone brings those with them I mean because that's, that's who we are a lot of times. But if you, as you, if you act as a juror you understand it's your duty to evaluate the facts of the case and decide what the facts are and if the prosecution proved beyond a reasonable doubt the defendant is guilty then you are obligated to come back with a verdict of guilty, do you understand that? Is that a yes?

MS. RUDOLPH: Yes.

THE COURT: On the other hand, if the prosecution fails to prove beyond a reasonable doubt that the defendant is guilty then you are obligated to come back with a verdict of not guilty, do you understand that?

MS. RUDOLPH: Yes.

THE COURT: And so even though you may have

sympathy, in order to function as a juror you have to set that sympathy aside and decide the case just on the evidence 'cause your function is only to decide the facts. Your function is not to impose penalty. I just want you to understand that. When, when you go in the jury room to deliberate, you're not gonna be going in there deciding well what should the penalty be if you were to find the defendant guilty. Your only function is to decide the facts and that's it. Once you've done that your job is done. The system handles it from there, do you understand that?

MS. RUDOLPH: Yes.

THE COURT: All right and you also understand that if for some reason a decision were made that the defendant is guilty, a Judge can't just do anything. We have guidelines that we have to follow do you understand that? And they're not for you to know about or to be concerned about 'cause it's not your issue. But the system already has in place what guidelines the Judges have to follow, do you understand that?

MS. RUDOLPH: Yes.

THE COURT: All right now knowing that, let's assume you sat through this trial and you were convinced that the prosecution had proved beyond a reasonable doubt Mr. Pouncy was guilty, would you say well I feel sorry

for Mr. Pouncy and so I'm gonna vote not guilty even though the facts have convinced me beyond a reasonable doubt he is guilty but because I feel sorry for him, I'm gonna vote not guilty. Would you do that?

MS. RUDOLPH: No.

THE COURT: Okay would you come back with a verdict that's consistent with your duty then? Even though you still might feel sympathy for him?

MS. RUDOLPH: Right.

THE COURT: Is that correct? All right. All right anything else Mr. Larobardiere?

MR. LAROBARDIERE: May we approach Judge?

THE COURT: Sure. Let's go off the record for one second Trish. All right let's go back on and Mr. Larobardiere any other questions?

MR. LAROBARDIERE: Yes Judge a few more followup on what the Judge has said ladies and gentlemen about
punishment. This is a case about carjacking and armed
robbery and weapons possession okay? Now, as the Judge
said, your job is to judge facts okay? And punishment
does not figure into what you're doing. Okay the Court
fixes punishment, the Judge does all right? Does anyone
feel that they can't keep that out of the back of their
mind that, you know uh judging the facts may have some
impact on someone's life. Does someone have any, any

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LASER BOND FORM B

hurdle, feel like they wouldn't be able to get over that No hands are raised. This also is a, gonna hurdle? involve a case about a aiding and abetting theory okay? I'll talk a little bit about that. Aiding and abetting theory recognizes where some people act as a group at times and offer encouragement or assistance to others in committing a crime even though they may not directly be committing the crime okay? Does everyone understand the difference? Okay everyone's shaking their head. anyone have a problem with that theory? That the law allows someone to be held responsible when they're acting or offering encouragement with another person? Does anyone have a problem with that, that theory of law? No? Okay.

THE COURT: And if you don't mind I just want to give an example because I want to make sure everyone is clear, crystal clear on what we're talkin' about. me the classic example of that is a situation where someone for instance robs a store and maybe there's two people involved. One person is drivin' the car, the other person is the passenger, they pull up in front of the store, the passenger gets out and goes in with the gun and actually commits the physical robbery. Points the gun, says give me your money, takes the money and runs back to the car. The guy who's drivin' the car

could be considered an aid and abettor because they are assisting in the fact that they brought the person there in the car and even though they didn't get out and go into the store, they're driving and so to that extent may be aiding, abetting or encouraging the uh, the crime.

And that's what we're talkin' about here that even though that person didn't point the gun, they still could be held responsible for the robbery, even though they were just the driver. All right go ahead Mr. Larobardiere.

MR. LAROBARDIERE: Thank you Judge. And once again, does anyone have a problem with that theory of the law? And that's something you would decide after hearing the facts, okay whether or not they fit into that theory of law. Are there any other reasons, for whatever reason, raise your hand, that you feel that this week, this day, and I anticipate two, to two to three days of trial that I just cannot serve on this jury? Raise your hand. Something that we haven't covered or haven't asked, either the Judge or me that you feel, after hearing everything and evaluating your personal situation you feel you cannot serve?

UNIDENTIFED JUROR: I just have one question.

I have an autistic child and my husband works midnights.

I can try and make arrangements with my sister. He's in school during the day so there shouldn't be a problem.

1	It's only if an emergency came up that the school would
2	call me or if they can't reach my husband if he is
3	sleeping-
4	THE COURT: Yeah I think if you give them the
5	jury board number, the jury board-
6	UNIDENTIFIED JUROR: Okay.
7	THE COURT: would certainly make you aware if
8	something came up.
9	UNIDENTIFIED JUROR: Okay.
10	THE COURT: Absolutely, yeah. So just make
11	sure that you do that when you go downstairs. Let them
12	know what the situation is and they'll take your name and
13	number and if that call comes, you know have them to call
14	the jury board if there's an issue and they will get the
15	message to you.
16	UNIDENTIFIED JUROR: Okay.
17	THE COURT: All right-
18	MR. LAROBARDIERE: Now ma'am does that-
19	THE COURT: just one second Mr. Larobardiere I
20	think we had a hand up here with Ms. Romano.
21	MR. LAROBARDIERE: Okay Ms. Romano?
22	MS. ROMANO: I just want to make sure it was
23	clear, I don't know many police officers or law
24	enforcement individuals but in my job I counsel people

with substance abuse problems, primarily on parole so I

just thought you guys should know that in case that's somehow precludes me or-

THE COURT: No it doesn't preclude you. I'm, I mean it's good that you let us know that that is a part of your employment but it does not preclude you at all.

MS. ROMANO: Okay.

THE COURT: Yeah. Any other questions Mr.

## Larobardiere?

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no.

MR. LAROBARDIERE: Uh just follow up as to your Is there anything goin' on in the personal life that's something that would be in the back of your head where you wouldn't be able to focus on the trial? UNIDENTIFIED JUROR: Not that I can foresee,

MR. LAROBARDIERE: Okay. As long as you can be communicated with-

UNIDENTIFIED JUROR: Right.

MR. LAROBARDIERE: through the jury board? And also I'd like to ask Ms. Suski too, I know if you're, you're going through Court proceedings, you know sometimes your mind too could be caught up on what's goin' on, you know with the attorneys or next week you have a hearing, you know something like that. I can appreciate that so I want to ask you is there anything that, would that be going on in the back of your mind

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where you would have difficulty, in all honesty, hearing the facts?

MS. SUSKI: No. I wouldn't be human if it wasn't going on in the back of my mind.

MR. LAROBARDIERE: True, true um but-

MS. SUSKI: But it's not all consuming.

MR. LAROBARDIERE: Okay. All right fair enough. That's all I have Judge.

THE COURT: So you would be able to set aside and, and focus on this trial for the time that you would be here? Okay. Thank you. All right Mr. Breczinski any questions you would have sir?

MR. BRECZINSKI: Certainly. You heard the

Judge talk about it, you heard the prosecutor talk about

it, that there's certain things, presumption of

innocence. Right now Omar sits there and you have to

presume he's innocent, I mean have the attitude hey he's

innocent. Got to be sort of like somebody from Missouri,

you know the show me state, that's what they call it, the

show me state. Well it is, basically that's the

attitude. Show me Mr. Prosecutor that he's guilty beyond

a reasonable doubt and if you can't, if I've got any kind

of a reasonable doubt then it's just like they, they

said. Doubt based on reason, common sense. If you do,

if I've got a reasonable doubt as if he's guilty, you

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haven't proven your case and, which is a, comes to an important point. You may think somebody is guilty, you may have a belief that he's quilty but there's reasonable doubt as to his guilt. Even if you think he might be quilty the question is, but you've got that reasonable doubt, can everybody, is there anybody here that wouldn't be able to vote not proven guilty beyond a reasonable doubt? You understand this is not showing he's innocent but that they haven't met their burden. You may believe he might be guilty but you've got a reasonable doubt. Does anybody have a problem with that? I mean there's people that say well he might be guilty and I don't know, we can't let somebody go that might be guilty but that's exactly what this is about. That if it's only a might be rather than he's, well I know he's guilty beyond any reason in common sense. That if you got a reason or common sense to believe that there's a, that there's a doubt as to it that you have to acquit him. That means he's not proven quilty. It doesn't mean he's innocent. Doesn't mean you believe he's innocent okay? Everybody follow that even, even if that's what it's about? Even if you believe he might be but you got a reasonable doubt? I see no hands raised.

THE COURT: One second Mr. Breczinski I just want to chime in on your, when you start out with the

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concept of the presumption of innocence-

MR. BRECZINSKI: Right.

THE COURT: So I just want to follow up on what What that means is that as Mr. Pouncy he says by that. sits here in this chair right now, if I were to ask all of you to stand up right now and say how do you find Mr. Pouncy, quilty or innocent? You would have to say innocent and the reason is you haven't heard any evidence at this point okay? So as he sits there right now he is innocent and just because he's charged, just because there's an information that I'm gonna read to you at some point, that is no evidence that he's guilty whatsoever. All it is is a document that is gonna tell you what he's charged with and you can't assume that because he's here in Court, because he's charged that he's quilty. And you know some people say well hey you know he must have, if he got arrested he must have done somethin' wrong. can't make those kinds of assumptions. What you have to do is you have to look and say okay prosecutor what evidence have you presented and if, and then you have to look at the evidence and say well does that prove beyond a reasonable doubt he's guilty? And if you bring that together, then you can come back with a verdict of guilty. But throughout the trial and until you have a chance to go in that jury room and deliberate, Mr. Pouncy

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is presumed innocent, does everyone understand that? All right go right ahead Mr. Breczinski?

MR. BRECZINSKI: Now this case involves somebody allegedly, actually a group of people allegedly stealing cars. Producing a gun and stealing cars. Because there's a gun involved, some people have problems with quns, some people are qun fanatics, some people have had incidents where they're, they very idea of a gun gets them upset, they're, get, some, they get excited, that can prejudice them for or against something. Is there anything about the fact there, there's gonna be allegations a gun was involved in these incidents that would make you unable to sit and fairly judge this jury, judge this man on this? I see no hands raised. are claims that cars were taken, there were other items taken, they were armed robberies, they were carjackings. Is there anything about that because of your past, maybe you've been involved in something or you had friends or relatives that were involved as victims of crimes or perpetrators of such a thing that would make you unable to sit and fairly just this because those are the type of things involved? I see no hands raised. In this case that we have, they're alleging that there were three gentlemen that were involved, two or three gentlemen involved in these incidents and they were all black which

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comes down to another question, race. There's a lot, there has been a lot of things in the paper in the last few years and even before that about the high incidents of black males that are arrested or convicted or on Is there anybody because it's a black male that's being accused would tend to have a belief that that's more likely that he's guilty just because of that Is there anyone that has racial prejudices or anything else that, because they couldn't sit unfair, fairly on this? A lot of people, because of the way they were raised, have prejudices. This is something that's ingrained, sometimes they know it's wrong but they can't get rid of it just because that's the way they were brought up because of their background and such. And that's not anything to be necessarily ashamed of but is there anyone who has those feelings or that background that thinks that that might interfere with fairly judging Mr. Pouncy? There's gonna be an issue of, about identification because quite frankly Mr. Pouncy's gonna say it wasn't me, they're mistaken. They all say it was me but it wasn't me. Can you listen to identification testimony, can you listen to everything and judge that if that's the issue? Is there anyone that would have a difficulty with the case with that sort of issue in it? I see no hands. There's, there is obviously the issue of

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1	theft. Has anybody have, had been like the victim of a
2	theft or anything else of the sort or has somebody else
3	that was involved in theft or good friends or relatives
4	where you just couldn't sit on a case because you, of
5	what happened to you or your friends or relatives? I see
6	no hands. Just a minute. I have no further questions.
7	THE COURT: Okay thank you Mr. Breczinski.
8	Challenge for cause Mr. Larobardiere?
9	MR. LAROBARDIERE: No Your Honor.
10	THE COURT: Challenge for cause Mr. Breczinski?
11	MR. BRECZINSKI: No Your Honor.
12	THE COURT: Preemptory challenge to you Mr.
13	Larboardiere?
14	MR. LAROBARDIERE: People have decided to
15	excuse juror number 3 Judge, Ms. Rudolph.
16	THE COURT: Okay Ms. Rudolph I want to thank
17	you for comin' down. If you'll report to the second
18	floor, they'll let you know what you need to do and I
. 19	also would agree with Mr. Larobardiere that the work you

do is very important so please keep it up because it is very helpful to society. Thank you ma'am. Go right ahead Ms.-

COURT CLERK: Juror B67, Bridget Walls.

THE COURT: Okay Ms. Walls if you'll come on up And good morning Ms. Walls.

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(Judge Archie L. Hayman; 01-24-06; 11:35 a.m.)
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                   MS. WALLS: Good morning.
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                   THE COURT: I want to welcome you to the
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         Genesee County Circuit Court. You've heard the questions
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         that I asked, Mr. Larobardiere asked and Mr. Breczinski
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         asked is that correct?
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                   MS. WALLS: Yes.
                   THE COURT: Would you have answered any of
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         those questions any differently than the rest of the jury
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         panel as a whole?
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                   MS. WALLS:
                               No.
                   THE COURT: Can you be here with us for the
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         time that I've indicated?
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                   MS. WALLS: Yes.
                   THE COURT: Can you be fair to both the
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         prosecution and the defendant?
                   MS. WALLS: I would try yes.
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                   THE COURT: Okay well you understand that if
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         you serve as a juror you will have an obligation to be
         fair to both sides, do you understand that?
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                   MS. WALLS: I do understand that.
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                   THE COURT: You cannot serve unless you are
         willing to be fair to both sides, do you understand that?
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                   MS. WALLS: Yes.
                   THE COURT: In fact it would not be fair to
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1	allow you to serve unless you were fair to both sides, do
2	you understand that?
3	MS. WALLS: Yes.
4	THE COURT: So can you make a, an honest effort
5	to be fair to both sides?
6	MS. WALLS: Yes.
7	THE COURT: As you sit there right now do you
8	have a, do you have a preference or do you prefer one
9	side or the other?
10	MS. WALLS: No not really. And I guess I say
11	that because my son havin' been in the system in trouble
12	also you know-
13	THE COURT: Yes.
14	MS. WALLS: but I know what my responsibility
15	would be as a juror.
16	THE COURT: All right now your son was in the
17	system is what you said is that correct?
18	MS. WALLS: Well actually still is because he
19	was just released from prison on January $4^{ ext{th}}$ and still has
20	a year-and-a-half probation.
21	THE COURT: All right and did he come through
22	this courthouse when he was charged ma'am?
23	MS. WALLS: I'm not sure.
24	THE COURT: All right. Did you come to Court
25	on his case?

1	Ms. WALLS: I did-
2	THE COURT: All right.
3	MS. WALLS: I just can't remember if it was
4	this Court or the other Court.
5	THE COURT: Well I guess what I meant, this
6	courthouse is what I meant.
7	MS. WALLS: Right.
8	THE COURT: Was it in this courthouse?
9	MS. WALLS: No I know, I knew you didn't mean
10	this one particular right because it was a uh, his, was
11	it a felony?
12	THE COURT: Okay if it was in this courthouse I
13	would say so ma'am.
14	MS. WALLS: Right.
15	THE COURT: All right and um did you go to the,
16	to see the outcome and what happened in the case?
17	MS. WALLS: Yes.
18	THE COURT: Were you satisfied or dissatisfied
19	with the way in which it was handled and resolved?
20	MS. WALLS: Dissatisfied.
21	THE COURT: Okay and was your dissatisfaction
22	with the attorney, the prosecution, the police, the
23	Judge?
24	MS. WALLS: The Judge.
25	THE COURT: Or all above?

1	MS. WALLS: Well basically the Judge.
2	THE COURT: The Judge okay-
3	MS. WALLS: The Judge.
4	THE COURT: so you weren't happy with the way
5	the Judge handled it is that correct?
6	MS. WALLS: Exactly.
7	THE COURT: All right. Can you set aside your
8	feelings about what the Judge did in that case involving
9	your son and decide this case just on the evidence that
10	you see in here?
11	MS. WALLS: Yes.
12	THE COURT: Okay. If you were to hear this
13	case, and let's assume that after you heard the entire
14	case, if you were convinced that the prosecution had
15	proven beyond a reasonable doubt that Mr. Pouncy was
16	guilty, could you come back with a verdict of guilty?
17	MS. WALLS: Yes.
18	THE COURT: On the other hand if you felt that
19	the prosecution had failed to prove beyond a reasonable
20	doubt that Mr. Pouncy was guilty, could you come back
21	with a verdict of not guilty?
22	MS. WALLS: Yes.
23	THE COURT: As you sit there and you look at
24	Mr. Pouncy, are you gonna draw parallels between Mr.
25	Pouncy and your son? In other words, would you have a

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tendency to see your son sitting over there as opposed to
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         Mr. Pouncy I quess is my question?
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                   MS. WALLS: Probably.
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                   THE COURT: All right. Would that affect your
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         judgment in deciding this case?
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                   MS. WALLS: No.
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                   THE COURT: So then you can set aside the fact
         that Mr. Pouncy is an African American male, young male
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         probably just as your son, and you can decide this case
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         just on the evidence, is that what you're tellin' me?
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                   MS. WALLS: Yes.
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                   THE COURT: Okay. Is there any reason you can
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         think of why you shouldn't serve on this jury ma'am?
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                   MS. WALLS: No.
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                   THE COURT: All right. Do you have a desire
         not to serve on this jury?
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                   MS. WALLS: Probably not.
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                   THE COURT: Okay can you tell me why?
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                   MS. WALLS: It's probably because of my son,
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         like I said, and I had a problem with the Judge, the uh,
         her verdict basically.
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                   THE COURT: Oh it's another female Judge? This
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         is the second time. Okay so you weren't happy with her,
         with her decision?
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                   MS. WALLS: I wasn't because the Judge that
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initially, was supposed to have heard the case was out
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         ill.
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                   THE COURT: Okay.
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                   MS. WALLS: And it was given to another Judge.
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                   THE COURT: I see. All right. Let me just ask
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         this and I, let me just ask you this, do you believe that
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         your son had done anything wrong?
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                   MS. WALLS:
                               I do.
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                   THE COURT: All right. So you don't quarrel
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         with the fact that he was charged then is that correct?
                   MS. WALLS:
                              Correct.
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                   THE COURT: And you don't quarrel with the fact
         that he was convicted is that correct?
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                   MS. WALLS: Correct.
                   THE COURT: You just quarrel with the way in
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         which it was handled by the Judge?
                   MS. WALLS: Exactly.
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                   THE COURT: All right um all right so I quess
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         I'm gonna ask you what I call my drop dead question. And
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         that is if you were Mr. Pouncy seated in the defense
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         chair, would you be satisfied to have you serve as a jury
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         in this, juror in this case? Knowing what you know about
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         yourself, would you be satisfied to have yourself sit on
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         this jury if you were in Mr. Pouncy's seat?
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                   MS. WALLS: Probably because he's probably
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1	thinking that I'm going to say not guilty because my son
2	sat in that seat.
3	THE COURT: All right but so you're sayin' that
4	if you're Mr. Pouncy you feel that he, that you, you
5	wouldn't have a problem with having you served is that
6	correct?
7	MS. WALLS: That's correct.
8	THE COURT: All right now let's, let's now go
9	on the other side of the table-
10	MS. WALLS: Right.
11	THE COURT: Let's assume you were the People of
12	the State of Michigan who are being represented here by
13	Mr. Larobardiere. Knowing what you know, would you be
14	satisfied to have you serve as a juror?
15	MS. WALLS: No he would say no I'm, sure.
16	THE COURT: No I'm not asking what he would
17	say-
18	MS. WALLS: Right.
19	THE COURT: I'm asking-
20	MS. WALLS: No.
21	THE COURT: knowing what you know-
22	MS. WALLS: No.
23	THE COURT: would you be satisfied if you were
24	Mr. Larobardiere to have you serve as a juror?
25	MS. WALLS: No.

1	THE COURT: And why ma'am?
2	MS. WALLS: Because that, knowing that, that I
3	would probably think that I would be unfair. I would be
4	prejudiced toward the defendant as opposed to the
5	prosecutor.
6	THE COURT: All right. Now you're sayin'
7	that's what Mr. Larobardiere might think but no my
8	question is knowing you and knowing who you are, would
9	you is my question?
10	MS. WALLS: No because I would say the same
11	thing.
12	THE COURT: Okay you would say the same thing
13	and that same thing is what?
14	MS. WALLS: No because I would be prejudice.
15	THE COURT: All right so you don't believe you
16	could be fair to the prosecution is that what you're
17	tellin' me?
18	MS. WALLS: As we go farther into the
19	questioning, probably not.
20	THE COURT: Okay. And that's because you have
21	some concerns about how your son was treated is that
22	correct?
23	MS. WALLS: Exactly.
24	THE COURT: All right and this might not be the
25	type of case for you to sit on because of what your

1	experience of what has happened with your son?
2	MS. WALLS: Right. Even though it's totally
3	different situations but-
4	THE COURT: Yes. Okay. All right anyone want
5	to question her based on my questions? Mr. Breczinski?
6	MR. BRECZINSKI: No Your Honor.
7	THE COURT: Mr. Larobardiere?
8	MR. LAROBARDIERE: No Your Honor.
9	THE COURT: I think I am gonna excuse you ma'am
10	and I, you know I really appreciate your honest answers.
11	You were totally honest and I really appreciate that
12	'cause you could have come up here and said anything
13	okay? But you didn't and so I appreciate that and I'm
14	gonna pray for you and for your son okay?
15	MS. WALLS: Thank you very much.
16	THE COURT: And if I ever have an opportunity
17	to run into you outside of the courthouse I'll share with
18	you some of my thoughts about-
19	MS. WALLS: You've actually done that.
20	THE COURT: our, our young African American
21	males okay? All right?
22	MS. WALLS: I heard that. Thank you.
23	THE COURT: Okay ma'am thank you.
24	MR. POUNCY: Thank you ma'am for bein' honest.
25	THE COURT: Mr. Pouncy please. That's okay but

1	thank you. All right let's uh, Mary Lee?
2	COURT CLERK: Juror H256, Deborah Gontarek.
3	THE COURT: Spell that last name.
4	COURT CLERK: G-o-n-t-a-r-e-k.
5	THE COURT: All right good morning still.
6	MS. GONTAREK: Good Morning.
7	THE COURT: And I want to welcome you also to
8	the Genesee County Circuit Court. And I'm gonna ask you
9	to pronounce your last name before I mess it all up.
10	MS. GONTAREK: Gontarek.
11	THE COURT: Gontarek?
12	MS. GONTAREK: Um hm.
13	THE COURT: All right Ms. Gontarek I want to
14	welcome you to the Court and you've heard the questions
15	that I asked, Mr. Larobardiere asked and Mr. Breczinski
16	asked is that correct?
17	MS. GONTAREK: Um hm.
18	THE COURT: Is that a yes?
19	MS. GONTAREK: Yes.
20	THE COURT: And would you have answered any of
21	those questions any differently than the rest of the jury
22	panel as a whole?
23	MS. GONTAREK: No.
24	THE COURT: Can you be here with us for the
25	time that I've indicated?

1	MS. GONTAREK: Yes.
2	THE COURT: Can you be fair to both the
3	prosecution and the defendant in this case?
4	MS. GONTAREK: Yes.
5	THE COURT: Is there any reason you can think
6	of why you shouldn't serve?
7	MS. GONTAREK: No.
8	THE COURT: Mr. Larobardiere any questions you
9	would have for this juror?
10	MR. LAROBARDIERE: Nothing further Judge.
11	THE COURT: Any questions you would have for
12	this juror Mr. Breczinski?
13	MR. BRECZINSKI: No Your Honor.
14	THE COURT: Okay any challenge for cause Mr.
15	Larobardiere?
16	MR. LAROBARDIERE: No Your Honor.
17	THE COURT: Challenge for cause Mr. Breczinski?
18	Challenge for cause?
19	MR. BRECZINSKI: No Your Honor.
20	THE COURT: Preemptory challenge to you Mr.
21	Breczinski.
22	MR. BRECZINSKI: We'll thank and excuse juror
23	in seat number 7, Patricia Zak.
24	THE COURT: All right Ms. Zak I want to thank
25	you for coming down ma'am. And thank you also for your

1	honest answers and if you'll report to the second floor
2	they'll let you know what you need to do ma'am. Thank
3	you.
4	COURT CLERK: Juror G213, Patricia Ayre, A-y-r-
5	e.
6	THE COURT: Good morning Ms. Ayre.
7	MS. AYRE: Morning.
8	THE COURT: And did I say your name correctly?
9	MS. AYRE: Ayre yes.
10	THE COURT: Ayres?
11	MS. AYRE: Ayre. Okay thank you. Ms. Ayre
12	you've had a chance to, well I want to welcome you to the
13	Circuit Court first and you've had a chance to hear my
14	questions, Mr. Larobardiere and Mr. Breczinski's
15	questions is that correct?
16	MS. AYRE: Um hm.
17	THE COURT: Is that a yes?
18	MS. AYRE: Yes.
19	THE COURT: Would you have answered any off
20	those questions any differently than the rest of the jury
21	panel has?
22	MS. AYRE: No.
23	THE COURT: Can you be here with us for the
24	time that I've indicated?
25	MS. AYRE: Yes.

1	THE COURT: Can you be fair to both the
2	prosecution and the defendant in this case?
3	MS. AYRE: Yes.
4	THE COURT: Is there any reason you can think
5	of why you shouldn't serve on this jury ma'am?
6	MS. AYRE: No.
7	THE COURT: All right Mr. Larobardiere any
8	questions?
9	MR. LAROBARDIERE: No Your Honor.
10	THE COURT: Mr. Breczinski?
11	MR. BRECZINSKI: None Your Honor.
12	THE COURT: Challenge for cause Mr.
13	Larobardiere?
14	MR. LAROBARDIERE: No Your, no thank you Your
15	Honor.
16	THE COURT: Challenge for cause Mr. Breczinski?
17	MR. BRECZINSKI: None Your Honor.
18	THE COURT: Preemptory challenge to you Mr.
19	Larobardiere.
20	MR. LAROBARDIERE: Judge the People would like
21	to thank and excuse juror number 9, Ms. Suski.
22	THE COURT: Okay Ms. Suski I want to thank you
23	for coming down ma'am and I am gonna be prayin' for you
24	also ma'am. Thank you. And if you'll report to the
25	second floor. Mary Lee?

1	COURT CLERK: Juror G232, Richard Lapland, L-a-
2	p-l-a-n-d.
3	THE COURT: And good morning Mr. Lapland.
4	MR. LAPLAND: Morning sir.
5	THE COURT: And we want to welcome you also to
6	the Genesee County Circuit Court sir and you've heard the
7	questions that I asked and Mr. Larobardiere asked and Mr.
8	Breczinski asked is that correct?
9	MR. LAPLAND: Yes I have.
10	THE COURT: Would you have answered any of
11	those questions any differently than the rest of the jury
12	panel as a whole?
13	MR. LAPLAND: No I haven't.
14	THE COURT: Can you be here with us for the
15	time that I've indicated?
16	MR. LAPLAND: Yes.
17	THE COURT: Can you be fair to both the
18	prosecution and the defendant in this case?
19	MR. LAPLAND: I believe so.
20	THE COURT: Is there any reason you can think
21	of why you shouldn't serve on this jury sir?
22	MR. LAPLAND: No but I would like to give you
23	some information. Just the fact that I do have some
24	relatives that work for the Genesee County Police
25	Department.

1	THE COURT: Okay and how many relatives do you
2	have?
. 3	MR. LAPLAND: Two.
4	THE COURT: And are they on road patrol, are
5	they in the offices?
6	MR. LAPLAND: One worked in dispatch and the
7	other one works in the jail.
8	THE COURT: In the jail? So they work for the
9	Sheriff's Department.
10	MR. LAPLAND: Yes I'm sorry.
11	THE COURT: Okay. Would that fact have any
12	affect on how you would judge this case sir?
13	MR. LAPLAND: No.
14	THE COURT: Would you be concerned after you
15	heard all the evidence if you came back with a verdict of
16	not guilty that your relatives might have somethin' to
17	say to you about that?
18	MR. LAPLAND: No.
19	THE COURT: Can you look them in the eye and
20	say hey I listened to the evidence and I made my own
21	judgment?
22	MR. LAPLAND: Yes I can.
23	THE COURT: Do you have any problem with making
24	judgments about facts sir?
25	MR. LAPLAND: No.

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1	THE COURT: Is there any other reason you can
2	think of why you shouldn't serve?
3	MR. LAPLAND: No.
4	THE COURT: Okay. Mr. Larobardiere any
5	questions?
6	MR. LAROBARDIERE: No questions Judge.
7	THE COURT: Mr. Breczinski?
8	MR. BRECZINSKI: No Your Honor.
9	THE COURT: Challenge for cause Mr.
10	Larobardiere?
11	MR. LAROBARDIERE: No thank you Judge.
12	THE COURT: Challenge for cause Mr. Breczinski?
13	MR. BRECZINSKI: No Your Honor.
14	THE COURT: Preemptory challenge to you Mr.
15	Breczinski.
16	MR. BRECZINSKI: We'll thank and excuse juror
17	in seat number 9, Mr. Lapland.
18	THE COURT: All right Mr. Lapland I want to
19	thank you sir for coming up and if you'll report to the
20	second floor they'll let you know what you need to do.
21	Thank you sir.
22	THE COURT: Mary Lee?
23	COURT CLERK: Juror D223, Julian Green.
24	THE COURT: Is that G-r-e-e-n-
25	COURT CLERK: Correct.

THE COURT: or n-e?

And I'm gonna ask everyone to be THE COURT: patient 'cause it looks like we may go into the lunch hour and I have either a choice. I can either break at lunch and have you all come back a two o'clock or I can get this down now and then I can send you on your merry way once we've got a jury so I assume most of you would just rather stick around until we get this done. Okay Ms. Green I want to welcome you to the right. Genesee County Circuit Court ma'am. And you've heard the questions that I asked, Mr. Larobardiere asked and Mr. Breczinski asked is that correct?

MS. GREEN: Yes.

THE COURT: Would you have answered any of those questions any differently than the rest of the jury panel as a whole?

MS. GREEN: I also have three members of my family who are in law enforcement.

THE COURT: Yes ma'am.

MS. GREEN: I don't think I can be impartial.

THE COURT: Okay.

MS. GREEN: I, I would like to (inaudible). just don't (inaudible). And I've had a car stolen.

> THE COURT: You've had your automobile stolen?

MS. GREEN: Yeah.

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THE COURT: And all of this so this type of case may not be the kind of case you should sit on?

MS. GREEN: This might not be a good idea.

THE COURT: All right. Based on that I'm gonna excuse you ma'am and I want to thank you for coming and bein' honest about it 'cause you could have just sat there and said nothing.

MS. GREEN: Well I wanted to serve-

THE COURT: Yes.

MS. GREEN: I really do but I don't, and I want to be fair to the young man but I don't know.

THE COURT: Well I do want you to know that I,
I certainly always have concerns when jurors are not able
to serve because you know we, we, like Mr. Larobardiere
pointed out earlier, it's good to have a good crosssection of the community and especially in, when, in
terms of African Americans on the, the jury. We
certainly like to try to keep as many as we can because
there's always a concern as to whether we're represented
in the jury and so I don't like to dismiss unless there's
a good reason to do so for that reason. But you've given
me a, a very good reason to excuse you and I am going to
excuse you ma'am. Thank you very much. If you'll report
to the second floor and Mary Lee you may proceed.

COURT CLERK: Juror B38, James Baldwin.

THE COURT: I see some of you are puttin' your
coats on it's gettin' cold in here. And I apologize for
that. We've talked to maintenance but there is actually
cold air that blows into this courtroom and we'll see if
we can do somethin' about it after lunch so it won't be
so cold in here for you. Okay Mr. Baldwin we want to
welcome you also to the Genesee County Circuit Court sir
and you've heard the questions that I asked, that Mr.
Larobardiere asked and Mr. Breczinski asked is that
correct?

MR. BALDWIN: Yes sir.

THE COURT: Would you have answered any of those questions any differently than the rest of the jury panel as a whole?

MR. BALDWIN: No sir.

THE COURT: Can you be here with us for the time I have indicated? Can you be fair to both the prosecution and the defendant in this case?

MR. BALDWIN: Yes sir.

THE COURT: Is there anything you can think of or is there any reason you can think of why you shouldn't serve on this jury sir?

MR. BALDWIN: No sir.

THE COURT: Any questions you would have Mr.

Larobardiere?

1	MR. LAROBARDIERE: (Inaudible) Judge. Mr.
2	Baldwin do you have any strong feelings towards the
3	police, either positive or negative from your life
4	experiences?
5	MR. BALDWIN: No sir.
6	MR. LAROBARDIERE: Feel you can be impartial to
7	both sides and hear the evidence as it comes in?
8	MR. BALDWIN: Yes sir.
9	MR. LAROBARDIERE: And render a judgment?
10	MR. BALDWIN: Yes sir.
11	MR. LAROBARDIERE: No, nothing further Judge.
12	THE COURT: All right Mr. Breczinski any
13	questions you would have sir?
14	MR. BRECZINSKI: Were you listening to all the
15	questions that I was asking everybody else?
16	MR. BALDWIN: Yes sir.
17	MR. BRECZINSKI: And was there anything that
18	you would have answered differently than what everybody
19	else did?
20	MR. BALDWIN: No sir.
21	MR. BRECZINSKI: No prejudices or anything
22	else?
23	MR. BALDWIN: I'm impartial (inaudible) so
24	(inaudible) too so (inaudible).
25	MR. BRECZINSKI: Okay thank you.

1	THE COURT: Okay then challenge for cause Mr.
2	Larobardiere?
3	MR. LAROBARDIERE: No thank you Judge.
4	THE COURT: Challenge for cause Mr. Breczinski?
5	MR. BRECZINSKI: None Your Honor.
6	THE COURT: Preemptory challenge to you Mr.
7	Larobardiere?
8	MR. LAROBARDIERE: Judge I'd like to thank and
9	excuse juror number 14, Ms. McPherson.
10	THE COURT: Okay Ms. McPherson I want to thank
11	you ma'am for coming down and looks like you're gonna get
12	to go and continue teachin' those kids and keep up the
13	good work. You know I pray for teachers all the time so-
14	MS. MCPHERSON: Thank you.
15	THE COURT: yes ma'am. Thank you.
16	COURT CLERK: Juror H277, Jeffrey Searles-
17	MR. SEARLES: Very good.
18	COURT CLERK: S-e-a-r-l-e-s.
19	THE COURT: Well I tell you I'm gonna have you
20	pronounce it before I pronounce it because I don't think
21	I'm as good as her at all. What was, what's that last
22	name again now?
23	MR. SEARLES: Pronounced Searles.
24	THE COURT: Searles.
25	MR. SEARLES: Yes.

1	THE COURT: All right Mr. Searles I want to
2	welcome you to the Genesee County Circuit Court and
3	you've heard the questions that I asked, Mr. Larobardiere
4	asked and Mr. Breczinski, Breczinski asked is that
5	correct?
6	MR. SEARLES: Yes I have.
. 7	THE COURT: Would you have answered any of
8	those questions any differently than the rest of the jury
9	panel as a whole?
10	MR. SEARLES: No I would not.
11	THE COURT: Can you be here with us for the
.12	time that I've indicated?
13	MR. SEARLES: Yes I can.
14	THE COURT: Can you be fair to both the
15	prosecution and the defendant in this case?
16	MR. SEARLES: No sir.
17	THE COURT: Is there any reason you can think
18	of why you shouldn't serve on this jury sir?
19	MR. SEARLES: Not at all.
20	THE COURT: All right Mr. Larobardiere any
21	questions?
22	MR. LAROBARDIERE: No thank you Judge.
23	THE COURT: Questions Mr. Breczinski?
24	MR. BRECZINSKI: I have none.
25	THE COURT: Challenge for cause Mr.

1	Larobardiere?
2	MR. LAROBARDIERE: No thank you Judge.
3	THE COURT: Challenge for cause Mr. Breczinski?
4	MR. BRECZINSKI: None Your Honor.
5	THE COURT: Preemptory challenge Mr.
6	Breczinski?
7	MR. BRECZINSKI: We would thank and excuse
8	juror in seat number 3, Deborah-
9	THE COURT: Gontarek?
10	MR. BRECZINSKI: Yes.
11	THE COURT: All right thank you ma'am. If
12	you'll report to the second floor they'll let you know
13	what you need to do.
14	COURT CLERK: Juror B43, Terry Curtis.
15	THE COURT: Good morning Mr. Curtis.
16	MR. CURTIS: Good morning.
17	THE COURT: We want to welcome you also to the
18	Genesee County Circuit Court. You heard the questions
19	that I asked, Mr. Larobardiere asked and Mr. Breczinski
20	asked is that correct?
21	MR. CURTIS: Yes.
22	THE COURT: Would you have answered any of
23	those questions any differently than the rest of the jury
24	panel?
25	MR. CURTIS: No. They probably won't want me

1	on here.
2	THE COURT: Well I, I, why do you say that sir?
3	MR. CURTIS: My house was broke into a year
4	ago-
5	THE COURT: Okay.
6	MR. CURTIS: they stole guns, they stole hand
7	guns, they stole money and that's-
8	THE COURT: So do you believe that that, the
9	fact that that happened, that that would affect your
10	judgment in this case?
11	MR. CURTIS: It sure would.
12	THE COURT: It would?
13	MR. CURTIS: Yep.
14	THE COURT: Well let, let me just ask you did
15	you find out who had done this?
16	MR. CURTIS: Nope not yet.
17	THE COURT: All right. You don't have any
18	indication that anyone in this courtroom did it is that
19	correct?
20	MR. CURTIS: Well that'd be just pointin'
21	fingers.
22	THE COURT: Okay-
23	MR. CURTIS: Not yet, no.
24	THE COURT: all right. That's what I'm, yeah,
25	that's my point. I mean you, you don't have any

1	indication that anyone in this courtroom is responsible
2	for that is that correct?
3	MR. CURTIS: No.
4	THE COURT: All right uh then um, is it just
5	the fact that you were invaded and that is gonna have a-
6	MR. CURTIS: Well I had a stepson that was shot
7	in the stomach too so-
8	THE COURT: I'm sorry?
9	MR. CURTIS: I had a stepson that was shot in
10	the stomach.
11	THE COURT: During that incident?
12	MR. CURTIS: Yes.
13	THE COURT: Okay then I think based on that I
14	can understand and I will certainly excuse you.
15	MR. CURTIS: Thank you.
16	THE COURT: And is he okay?
17	MR. CURTIS: Yes he is.
18	THE COURT: All right very good. All right if
19	you'll report to the second floor they'll let you know
20	what you need to do.
21	MR. CURTIS: Thank you sir.
22	THE COURT: Yes sir.
23	COURT CLERK: Juror H267, Hugh Miller.
24	THE COURT: And good morning still Mr. Miller.
25	MR. MILLER: Morning.

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(Judge Archie L. Hayman; 01-24-06; 11:56:33 a.m.)
1
                   THE COURT: And we also want to welcome you to
2
         the Circuit Court sir. You heard the questions that I
3
         asked, Mr. Larobardiere asked and Mr. Breczinski asked is
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         that correct?
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 6
                   MR. MILLER: Yes.
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                   THE COURT: Would you have answered any of
8
         those questions any differently than the rest of the jury
9
         panel as a whole?
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                   MR. MILLER: No.
11
                   THE COURT: Can you be here with us for the
         time that I've indicated?
12
                   MR. MILLER: Yes sir.
13
                   THE COURT: Can you be fair to both the
14
         prosecution and the defendant in this case?
15
16
                   MR. MILLER: Yes.
                   THE COURT: Is there any reason you can think
17
         of why you shouldn't serve on this jury sir?
18
19
                   MR. MILLER: No.
                   THE COURT: Mr. Larobardiere any questions?
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21
                   MR. LAROBARDIERE: Yes Judge. Mr. Miller I see
22
         you're an engineer?
23
                   MR. MILLER: Yes.
24
                   MR. LAROBARDIERE: And one question I have for
25
         engineers is that you're, you're probably detail oriented
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is that fair to say? 1 MR. MILLER: That's very fair. 2 MR. LAROBARDIERE: Okay and I'll go back to my 3 original, some of my original questions is that at trial, 4 the evidence will come in by the testimony, documents to 5 create pictures okay? And the prosecutor proves, or I 6 try to prove the elements that the Judge will give you 7 okay? And you may have some questions being an engineer 9 is what I'm gettin' at about certain details that some 10 person who's not an engineer may, may not question that. If you have such a question and it doesn't get answered 11 12 is that gonna be a problem for you as an engineer? MR. MILLER: No. 13 MR. LAROBARDIERE: Do you understand, do you 14 follow what I'm saying? 15 MR. MILLER: I'm following what your saying 16 17 yes. MR. LAROBARDIERE: This is not a technical 18 19 science-20 MR. MILLER: Right. I don't have to prove it to myself. You, you have to prove it. 21 MR. LAROBARDIERE: Right. This is a, in other 22 words what I'm sayin' is your job deals with a, a, I 23 think a very technical science-

Um hm.

MR. MILLER:

1	MR. LAROBARDIERE: whereas it gets into very
2	fine details and this, although we had to prove elements,
3	okay, certain things, the proofs doesn't have to be so
4	technical that it's beyond any doubt okay?
5	MR. MILLER: Um hm.
6	MR. LAROBARDIERE: Do you have a problem with
7	that concept?
8	MR. MILLER: No I don't.
9	MR. LAROBARDIERE: All right do you understand
10	what I'm, you follow what I'm saying?
11	MR. MILLER: Yes I follow what you're saying.
12	MR. LAROBARDIERE: Okay thank you nothing
13	further.
14	THE COURT: Thank you. Mr. Breczinski?
15	MR. BRECZINSKI: Do you have any problem with
16	the concept that if you have a reasonable doubt, even if,
17	even if you think he might be guilty that you would have
18	to acquit?
19	MR. MILLER: I don't have a problem with that,
20	no.
21	MR. BRECZINSKI: You could do that?
22	MR. MILLER: I could do that.
23	MR. BRECZINSKI: I have nothing further.
24	THE COURT: Challenge for cause Mr.
25	Larobardiere?

1	MR. LAROBARDIERE: No thank you Judge.
2	THE COURT: Challenge for cause Mr. Breczinski?
3	MR. BRECZINSKI: None Your Honor.
4	THE COURT: Preemptory challenge to you Mr.
5	Larobardiere.
6	MR. LAROBARDIERE: No thank you Judge.
7	THE COURT: Okay pass. Mr. Breczinski
8	preemptory challenge to you sir.
9	MR. BRECZINSKI: No thank you Judge.
10	THE COURT: Okay pass. Mr. Breczinski
11	preemptory challenge to you sir.
12	MR. BRECZINSKI: We would thank and excuse
13	juror in seat number 6, Ms. Shirley-
14	THE COURT: Ms. Michael?
15	MR. BRECZINSKI: Michael yeah.
16	THE COURT: All right Ms. Michael I want to
17	thank you for coming down. If you'll report to the
18	second floor they'll let you know what you need to do
19	ma'am.
20	MR. BRECZINSKI: No I said juror 6.
21	THE COURT: Oh okay I'm sorry seat 6 yes okay
22	you're right that would be Ms. Michael yep. You're Ms.
23	Morris I'm sorry. Okay thank you and go right ahead Mary
24	Lee.
25	COURT CLERK: Juror G222, Craig Cohoon-

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2 3 4	COURT CLERK: Craig C-o-h-o-o-n.  THE COURT: Okay and good afternoon Mr. Cohoon.
4	
_	And you've heard the questions that I've asked and Mr.
5	Larobardiere and Mr. Breczinski asked is that correct?
6	MR. COHOON: Yes.
7	THE COURT: Would you have answered any of
8	those questions any differently than the rest of the jury
9	panel?
10	MR. COHOON: No.
11	THE COURT: Can you be here for the time that
12	I've indicated?
13	MR. COHOON: Yes sir.
14	THE COURT: Can you be fair to both the
15	prosecution and the defendant in this case?
16	MR. COHOON: I believe so.
17	THE COURT: All right is there any reason you
18	can think of why you shouldn't serve?
19	MR. COHOON: No sir.
20	THE COURT: Mr. Larobardiere any questions?
	MR. LAROBARDIERE: No thank you.
21	
21 22	THE COURT: Questions Mr. Breczinski?
	THE COURT: Questions Mr. Breczinski?  MR. BRECZINSKI: None Your Honor.
22	

1	MR. LAROBARDIERE: None Your Honor.
2	THE COURT: Challenge for cause Mr. Breczinski?
3	MR. BRECZINSKI: None Your Honor.
4	THE COURT: Preemptory challenge to you Mr.
5	Larobardiere.
6	MR. LAROBARDIERE: Pass Judge.
7	THE COURT: Peremptory challenge to you Mr.
8	Breczinski.
9	MR. BRECZINSKI: We will thank and excuse juror
10	in seat number 1, Cheryl Hawkins.
11	THE COURT: Okay Ms. Hawkins want to thank you
12	for comin' down ma'am. If you'll report to the second
13	floor, they'll let you know what you need to do.
14	COURT CLERK: Juror B66, Josephine Villarreal,
15	V-i-l-l-a-r-r-e-a-l. B66 Josephine Villarreal.
16	THE COURT: Good afternoon Ms. Villarreal.
17	MS. VILLARREAL: Good afternoon.
18	THE COURT: And Ms. Villarreal we want to
19	welcome you to the Genesee County Circuit Court. You
20	heard the questions that I've asked, Mr. Larobardiere has
21	asked and Mr. Breczinski has asked is that correct?
22	MS. VILLARREAL: Yes.
23	THE COURT: Um is there, are there any
24	_ questions that you would have answered any differently
25	than the rest of the jury panel as a whole?

1	MS. VILLARREAL: Right now I have four nephews
2	went to prison right now.
3	THE COURT: Okay and would that affect your
4	ability to be fair in this case?
5	MS. VILLARREAL: Yes. Yes.
6	THE COURT: Okay. I'm gonna excuse ma'am.
7	Thank you for comin' down and thank you for bein' honest.
8	MS. VILLARREAL: Thank you.
9	THE COURT: Yes ma'am.
10	COURT CLERK: Juror G233, Dawn Liquia, L-i-q-u-
11	i-a.
12.	THE COURT: Good afternoon ma'am.
13	MS. LIQUIA: Good afternoon.
14	THE COURT: And would you pronounce that last
15	name for me?
16	MS. LIQUIA: Liquia.
17	THE COURT: Liquia?
18	MS. LIQUIA: Liquia.
19	THE COURT: Okay I didn't want to even try that
20	one.
21	MS. LIQUIA: I'm used to it.
22	THE COURT: Okay thank you. Thank you Ms.
23	Liquia and we want to welcome you to the Genesee County
24	Circuit Court. You've heard the questions that I asked,
25	Mr. Larobardiere asked and Mr. Breczinski asked is that

1	correct?
2	MS. LIQUIA: Yes.
3	THE COURT: Would you have answered any of
4	those questions any differently than the rest of the jury
5	panel as a whole?
6	MS. LIQUIA: No.
7	THE COURT: Can you be here with us for the
8	time that I've indicated?
9	MS. LIQUIA: Yes.
10	THE COURT: Can you be fair to both the
11	prosecution and the defendant in this case?
12	MS. LIQUIA: Yes.
13	THE COURT: Is there any reason you can think
14	of why you shouldn't serve on this jury ma'am?
15	MS. LIQUIA: No.
16	THE COURT: Any questions you would have Mr.
17	Larobardiere?
18	MR. LAROBARDIERE: None Your Honor.
19	THE COURT: Any questions you would have Mr.
20	Breczinski?
21	MR. BRECZINSKI: None Your Honor.
22	THE COURT: Challenge for cause Mr.
23	Larobardiere?
24	MR. LAROBARDIERE: No thank you Your Honor.
25	THE COURT: Challenge for cause Mr. Breczinski?
	·

1	MR. BRECZINSKI: No thank you.
2	THE COURT: Preemptory challenge to you Mr.
3	Larobardiere.
4	MR. LAROBARDIERE: Pass.
5	THE COURT: Pass. Preemptory challenge to you
6	Mr. Larobardiere, I mean Mr. Breczinski, excuse me.
7	MR. BRECZINSKI: We thank and excuse juror in
8	seat number 6, Craig Cohoon.
9	THE COURT: Okay Mr. Cohoon we want to thank
10	you for comin' down sir. If you'll report to the second
11	floor, thank you sir.
12	COURT CLERK: Juror B65, Brian Valance-Jones.
13	THE COURT: And good afternoon Mr. Jones.
14	MR. JONES: Afternoon Your Honor.
15	THE COURT: And sir we want to welcome you also
16	to the Genesee County Circuit Court. You've heard the
17	questions that I asked, Mr. Larobardiere asked and Mr.
18	Breczinski asked is that correct?
19	MR. JONES: Yes sir.
20	THE COURT: Would you have answered any of
21	those questions any differently than the rest of the jury
22	panel as a whole?
_23	MR. JONES: No sir.
24	THE COURT: Can you be here with us for the
25	time that I've indicated?

1	MR. JONES: I do have a conflict sir.
2	THE COURT: Okay tell me about it.
3	MR. JONES: This Thursday I have a criminal
4	court case in 50 <sup>th</sup> District Court.
5	THE COURT: All right well believe it or not
6	you can be excused for that. You just have to let them
7	know that you're here serving on the jury and they'll
8	have to excuse you okay?
9	MR. JONES: Yes sir.
10	THE COURT: Now is that matter a trial or what?
11	MR. JONES: It's been adjourned several times-
12	THE COURT: Okay.
13	MR. JONES: I'm the officer in charge of the
14	case.
15	THE COURT: So you're the officer in charge?
16	MR. JONES: Yes sir.
17	THE COURT: So you would have to be called as a
18	witness is that what is goin' on?
19	MR. JONES: Yes sir.
20	THE COURT: And is it scheduled for a trial is
21	that what you understand it to be or some other
22	proceeding?
23	MR. JONES: I don't know Your Honor. It's been
24	adjourned a couple of times.
25	THE COURT: Okay. Which police force do you

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1 serve on? MR. JONES: Oakland County Sheriff's office. 2 THE COURT: All right. Would the fact that you 3 are a police officer would that affect your ability to be 4 fair to this case, in this case towards the prosecution 5 and the defendant? 6 7 MR. JONES: No Your Honor. THE COURT: Is there any reason you can think 8 9 of why you shouldn't serve? MR. JONES: Other than I'm a police officer 10 11 sir. THE COURT: All right. Would you have the 12 tendency at first, let's assume a police officer comes in 13 14 and takes the witness stand, would you have a tendency to believe that witness simply because they're a police 15 16 officer? MR. JONES: I would have to say yes sir. 17 18

THE COURT: Okay um would that be the final word on it? Let's assume that the officer got on the stand and said well the light was red and the defense presented photographs that showed at the exact time that we're talkin' about the light was green. Would you have a tendency to believe the police officer or the evidence that you see in front of you?

MR. JONES: The evidence sir.

1	THE COURT: All right so if the evidence was
2	contrary to what the police officer testified to you
3	could come at a conclusion using your common sense that
4	the police officer was wrong is that correct?
5	MR. JONES: Absolutely.
6	THE COURT: All right but now let me ask you
7	this question and I guess I'm gettin' to my drop dead
8	question again, if you were Mr. Pouncy, would you be
9	satisfied knowing you, would you be satisfied to have you
10	serve as a juror in this case?
11	MR. JONES: Absolutely not.
12	THE COURT: Okay then on that note I'm gonna
13	excuse you then and thank you for bein' honest sir.
14	MR. JONES: Yes sir.
15	THE COURT: Yes sir. Go right ahead Mary Lee.
16	COURT CLERK: Juror G321, Rosie Lang.
17	THE COURT: Is that L-a-n-g or L-a-i-n-g?
18	COURT CLERK: Correct, L-a-n-g.
19	THE COURT: Okay. Good afternoon Ms. Lang.
20	MS. LANG: Good afternoon.
21	THE COURT: And if you'll come up and take the
22	seat that was vacated by Mr. Jones? And we want to
23	welcome you also to the Genesee County Circuit Court.
24	Ms. Lang you've had a chance to hear my questions, Mr.
25	Larobardiere's questions and Mr. Breczinski's questions

1	is that correct?
2	MS. LANG: Correct.
3	THE COURT: Would you have answered any of
4	those questions any differently than the rest of the jury
5	panel as a whole?
6	MS. LANG: No.
7	THE COURT: Can you be here with us for the
8	time that I've indicated?
9	MS. LANG: Yes.
10	THE COURT: Can you be fair to both the
11	prosecution and the defendant in this case?
12	MS. LANG: Yes.
13	THE COURT: Is there any reason you can think
14	of why you shouldn't serve on this jury?
15	MS. LANG: No.
16	THE COURT: Okay Mr. Larobardiere any
17	questions?
18	MR. BRECZINSKI: We'd like to approach Your
19	Honor.
20	THE COURT: Okay sure please approach
21	gentlemen. Let's go off the record for a second Trish.
22	So let's go back on the record Trish and Mr. Larobardiere
23	you have any questions for this juror?
24	MR. LAROBARDIERE: Yes. Ms. Lang I received
25	your questionnaire and it's blank so I had some questions

1	about that. Did you fill out a questionnaire?
2	MS. LANG: Yeah.
3	MR. LAROBARDIERE: Okay uh, I don't know how
4	you want me to-
5	THE COURT: Nope if there, if there is a
6	question on the questionnaire that you're concerned about
7	ask.
8	MR. LAROBARDIERE: Okay. The questionnaire
9	does ask about employment. Are you employed ma'am?
10	MS. LANG: I'm retired.
11	MR. LAROBARDIERE: Retired from what type of
12	job?
13	MS. LANG: Hurley.
14	MR. LAROBARDIERE: Hurley Hospital?
15	MS. LANG: Um hm.
16	MR. LAROBARDIERE: And it asks about
17	convictions. Do you yourself have any criminal
18	convictions?
19	MS. LANG: No.
20	MR. LAROBARDIERE: Okay do you have any family
21	members that do?
22	MS. LANG: Yes.
23	MR. LAROBARDIERE: And can you tell me about
24	that?
25	MS. LANG: I have a son was convicted last

1	year.
2	MR. LAROBARDIERE: Okay what type of offense?
3	MS. LANG: Felony.
4	MR. LAROBARDIERE: All right does that cause
5	you to have any strong feelings one way or another
6	towards the justice system?
7	MS. LANG: No.
8	MR. LAROBARDIERE: Were you satisfied with the
9	outcome of your son's case?
10	MS. LANG: No.
11	MR. LAROBARDIERE: Okay what were you
12	dissatisfied about?
13	MS. LANG: The way the case was handled.
14	MR. LAROBARDIERE: How the case was handled?
15	MS. LANG: Yes.
16	MR. LAROBARDIERE: By the attorneys or the,
17	we've had people talk about the Judges. Which, which
18	part of the system?
19	MS. LANG: Well the attorneys and the Judge.
20	MR. LAROBARDIERE: All right um do you think
21	your involvement with your son's case would cause you
22	difficulty sitting here today being impartial in another
23	criminal case?
24	MS. LANG: No.
25	MR. LAROBARDIERE: That's all I have Judge.

LASER BOND FORM B

1	THE COURT: Okay Mr. Breczinski? And Mr.
2	Breczinski I think Mr. Pouncy may have a question for you
3	before you proceed here.
4	MR. BRECZINSKI: Can we approach Your Honor?
5	THE COURT: Yes. Let's go off the record again
6	Trish. Do you have any questions Mr. Breczinski?
7	MR. BRECZINSKI: Are you married?
8	MS. LANG: No.
9	MR. BRECZINSKI: Divorced?
10	MS. LANG: Yes.
11	MR. BRECZINSKI: Okay. Have you ever been
12	involved in a lawsuit?
13	MS. LANG: No.
14	MR. BRECZINSKI: Any um, have you ever been
15	involved in any criminal matters yourself?
16	MS. LANG: No.
17	MR. BRECZINSKI: Okay. Do you have any
18	infirmities or hearing problems or sight problems that
19	would make it hard for you to sit as a juror?
20	MS. LANG: No.
21	MR. BRECZINSKI: I have nothing further of this
22	witness.
23	THE COURT: All right challenge for cause Mr.
24	Larobardiere?
25	MR. LAROBARDIERE: No thank you Judge.

1	THE COURT: Challenge for cause Mr. Breczinski?
2	MR. BRECZINSKI: None Your Honor.
3	THE COURT: All right preemptory challenge to
4	you Mr. Larobardiere.
5	MR. LAROBARDIERE: Judge we'd like to thank and
6	excuse juror number 6, Ms. Lang.
7	THE COURT: All right Ms. Lang I want to thank
8	you for coming ma'am. If you'll report to the second
9	floor they'll let you know what you need to do.
10	COURT CLERK: Juror H247, Catherine Anderson.
11	THE COURT: And good afternoon Ms. Anderson.
12	MS. ANDERSON: Afternoon.
13	THE COURT: I want to welcome you to the
14	Genesee County Circuit Court. You've heard the questions
15	that I asked, Mr. Larobardiere asked and Mr. Breczinski
16	asked is that correct?
17	MS. ANDERSON: Correct.
18	THE COURT: Would you have answered any of
19	those questions any differently than the rest of the jury
20	panel as a whole?
21	MS. ANDERSON: Well I was in, kind of involved
22	in a stolen car incident.
23	THE COURT: Okay a, a lawsuit you say?
24	MS. ANDERSON: Well it never really went to
25	Court-

1	THE COURT: Okay.
2	MS. ANDERSON: it, they pled on it and it was
3	stolen when I was on vacation. It was back before I got
4	back so-
5	THE COURT: All right so you recovered the
6	property-
7	MS. ANDERSON: Um hm.
. 8	THE COURT: and it was resolved without you
9	having to go to Court?
10	MS. ANDERSON: Correct.
11	THE COURT: Were you satisfied with the way in
12	which it was resolved?
13	MS. ANDERSON: Yes.
14	THE COURT: Do you, would, would the fact that
15	you've gone through that experience, would that have any
16	affect on your judgment in this case today?
17	MS. ANDERSON: No 'cause I didn't really go
18	through it.
19	THE COURT: All right.
20	MS. ANDERSON: I mean I was just, I was
21	affected kind of over the phone but I never really had
22	any dealings with the courthouse.
23	THE COURT: All right so it would not affect
24	how you would judge this case then-
25	MS. ANDERSON: No.

1	THE COURT: is that correct? Can you be fair
2	to both the prosecution and the defendant in this case?
3	MS. ANDERSON: Yes I can.
4	THE COURT: Is there any reason you can think
5	of why you shouldn't serve?
6	MS. ANDERSON: No.
7	THE COURT: Can you be here for the time that
8	I've indicated?
9	MS. ANDERSON: Yes.
10	THE COURT: All right any questions you would
11	have Mr. Larobardiere?
12	MR. LAROBARDIERE: No thank you Judge.
13	THE COURT: Questions Mr. Breczinski? Any
14	questions Mr. Breczinski?
15	MR. BRECZINSKI: Um there's something about a
16	stolen car. Were you a victim of (inaudible)?
17	MS. ANDERSON: Well it was my car. I had
18	loaned it to my nephew while I was on vacation and his
19	girlfriend took it from him and it was returned before I
20	got back home so-
21	MR. BRECZINSKI: I have nothing further.
22	THE COURT: All right challenge for cause Mr.
23	Larobardiere?
24	MR. LAROBARDIERE: No thank you.
25	THE COURT: Challenge for cause Mr. Breczinski?

1	MR. BRECZINSKI: None Your Honor.
2	THE COURT: Preemptory challenge to you Mr.
3	Breczinski.
4	MR. BRECZINSKI: We'll thank and excuse juror
5	in seat number 6, Catherine Anderson.
6	THE COURT: All right Ms. Anderson thank you
7	very much. If you'll report to the second floor they'll
8	let you know what you need to do ma'am. Thank you ma'am.
9	COURT CLERK: Juror G228, William Hopee, Hopee?
10	MR. HOPEE: Hopee.
11	COURT CLERK: Hopee, H-o-p-e-e.
12	THE COURT: And good afternoon Mr. Hopee.
13	MR. HOPEE: Afternoon.
14	THE COURT: And just so you know that's why I
15	have her pronounce the name first so that hopefully I'll
16	get it right. Mr. Hopee we want to welcome you to the
17	Genesee County Circuit Court. You've heard the questions
18	that I asked, Mr. Larobardiere asked and Mr. Breczinski
19	asked is that correct? Would you have answered any of
20	those questions any differently than the rest of the jury
21	panel?
22	MR. HOPEE: No.
23	THE COURT: Can you be here with us for the
24	time that I've indicated?
25	MR. HOPEE: Yes.

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THE COURT: Can you be fair to both the
1
         prosecution and the defendant in this case?
                   MR. HOPEE:
                               Yes.
3
                   THE COURT: Is there any reason you can think
4
         of why you shouldn't serve?
5
                   MR. HOPEE: Well my wife has chronic asthma and
7
         she just had a stroke in May so if I could be notified if
         something happens, that'd be the only reason.
8
9
                   THE COURT: All right so I assume someone's
         watching her while you're here?
10
11
                   MR. HOPEE:
                               No.
                   THE COURT: Okay but she may be able to call is
12
         what you're saying?
13
14
                   MR. HOPEE: They've got a very good emergency
         response team in Linden.
15
                   THE COURT: Okay if you would give them the
16
         Jury Board's number and make sure the Jury Board knows
17
         that that call could be coming through they certainly
18
         will get a hold of you here if that happens. Knowing
19
20
         that is there any other reason that you can think of why
         you shouldn't serve?
21
22
                   MR. HOPEE: No.
23
                   THE COURT: All right Mr. Larobardiere any
24
         questions?
25
                   MR. LAROBARDIERE: No thank you.
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1	THE COURT: Mr. Breczinski?
2	MR. BRECZINSKI: None Your Honor.
3	THE COURT: Okay challenge for cause Mr.
4	Larobardiere?
5	MR. LAROBARDIERE: No thank you Your Honor.
6	THE COURT: Challenge for cause Mr. Breczinski?
7	MR. BRECZINSKI: None Your Honor.
. 8	THE COURT: Preemptory challenge to you Mr.
9	Larobardiere.
10	MR. LAROBARDIERE: People pass.
11	THE COURT: Peremptory challenge to you Mr.
12	Breczinski.
13	MR. BRECZINSKI: We thank and excuse juror in
14	seat number 11, Craig Morris.
15	THE COURT: All right Mr. Morris thank you very
16	much sir if you'll report to the second floor, they'll
17	let you know what you need to do. And Mary Lee, yeah,
18	yeah.
19	COURT CLERK: Juror G212, Amy Abdella.
20	THE COURT: And good afternoon Ms. Abdella.
21	MS. ABDELLA: Good afternoon.
22	THE COURT: Want to welcome you also to the
23	Genesee County Circuit Court Ms. Abdella and you heard
24	the questions that I asked, Mr. Larobardiere asked and
25	Mr. Breczinski asked is that correct?

1	MS. ABDELLA: Yes.
2	THE COURT: Would you have answered any of
3	those questions any differently than the rest of the jury
4	panel as a whole?
5	MS. ABDELLA: No.
6	THE COURT: Can you be here with us for the
7	time that I've indicated?
8	MS. ABDELLA: Yes.
9	THE COURT: Can you be fair to both the
10	prosecution and the defendant in this case?
11	MS. ABDELLA: Yes.
12	THE COURT: Is there any reason you can think
13	of why you shouldn't serve?
14	MS. ABDELLA: No.
15	THE COURT: Any questions you would have Mr.
16	Larboardiere?
17	MR. LAROBARDIERE: (Inaudible) is this
18	(inaudible)?
19	MS. ABDELLA: Yes.
20	MR. LAROBARDIERE: It's not gonna cause a
21	hardship to be away from your business?
22	MS. ABDELLA: No (inaudible).
23	MR. LAROBARDIERE: I don't anticipate going the
24	whole length the Judge mentioned but it's a possibility.
25	MS. ABDELLA: (Inaudible).

1	MR. LAROBARDIERE: Okay nothing further.
2	THE COURT: Any challenge for, any questions
3	Mr. Breczinski? Any questions Mr. Breczinski?
4	MR. BRECZINSKI: Just one second Your Honor.
5	None Your Honor.
6	THE COURT: Challenge for cause Mr.
7	Larobardiere?
8	MR. LAROBARDIERE: No thanks Judge.
9	THE COURT: Challenge for cause Mr. Breczinski?
10	MR. BRECZINSKI: None Your Honor.
11	THE COURT: Preemptory challenge to you Mr.
12	Larobardiere.
13	MR. LAROBARDIERE: People pass.
14	THE COURT: Peremptory challenge to you Mr.
15	Breczinski.
16	MR. BRECZINSKI: We would excuse Jeff Searles,
17	seat number 14.
18	THE COURT: Okay Mr. Searles I want to thank
19	you for coming down sir if you'll report to the second
20	floor they'll let you know what you need to do.
21	COURT CLERK: Juror G220, Brian Buswell, B-u-s-
22	w-e-l-l.
23	THE COURT: And good afternoon Mr. Buswell.
24	MR. BUSWELL: Afternoon.
25	THE COURT: We want to welcome you to the

Circuit Court and you've heard the questions that I 1 asked, Mr. Larobardiere asked and Mr. Breczinski asked is 2 3 that correct? MR. BUSWELL: Yes. 4 THE COURT: Would you have answered any of 5 those questions any differently than the rest of the jury 6 7 panel as a whole? MR. BUSWELL: No. 8 THE COURT: Can you be here with us for the 9 time that I've indicated? 10 MR. BUSWELL: It will create a hardship. 11 work for a small company, there's only three employees 12 and ones actually out of town right now for the week. THE COURT: Are you paid while you're here? 14 15 MR. BUSWELL: No. 16 THE COURT: Okay and um, all right and you said it would create a hardship. Does it create a hardship 17 for the company or for you? 18 19 MR. BUSWELL: Both. 20 THE COURT: Okay, all right. I'm gonna excuse 21 I'm gonna ask that you report to the second floor. Let them know when you can come back and serve because 22 everyone has an obligation to serve, maybe this just 23 isn't the best time for you okay? 24 25 MR. BUSWELL: Um hm.

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(Judge Archie L. Hayman; 01-24-06; 12:19 p.m.)
1
                   THE COURT: Thank you sir.
2
                   MR. BUSWELL:
                                 Um hm.
3
                   THE COURT: Go right ahead Mary Lee.
4
                   MR. BUSWELL: Thank you.
5
                   COURT CLERK: Juror B72, Kristie Zamora, Z-a-m-
6
7
         o-r-a.
8
                   THE COURT: And how do you pronounce that
         ma'am?
9
                   MS. ZAMORA:
10
                                 Zamora.
11
                   THE COURT: Zamora all right good afternoon Ms.
         Zamora and I want to welcome you here to the Genesee
12
         County Circuit Court. You've heard the questions that I
13
         asked, Mr. Larobardiere and Mr. Breczinski asked is that
14
         correct?
15
16
                   MS. ZAMORA: Yes.
17
                   THE COURT:
                               Would you have answered any of
         those questions any differently than the rest of the jury
         panel as a whole?
19
                   MS. ZAMORA: No I wouldn't.
20
                               Can you be here with us for the
21
                   THE COURT:
22
         time that I've indicated?
23
                   MS. ZAMORA: Yes.
24
                   THE COURT: Can you be fair to both the
         prosecution and the defendant in this case?
25
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1	MS. ZAMORA: Yes.
2	THE COURT: Is there any reason you can think
3	of why you shouldn't serve on this jury ma'am?
4	MS. ZAMORA: I just want to share that my boss
5	is a former prosecutor and I have a couple of family
6	members that are in law enforcement.
7	THE COURT: All right and who is your boss?
8	MS. ZAMORA: Brooks Patterson.
9	THE COURT: All right so that would be in
10	Oakland County?
11	MS. ZAMORA: Oakland County correct.
12	THE COURT: All right. Would the fact that
13	your former boss, boss was a prosecutor affect your
14	ability to be fair in this case ma'am?
15	MS. ZAMORA: No.
16	THE COURT: And when he was your boss were you
17	in the prosecutor's office?
18	MS. ZAMORA: No.
19	THE COURT: All right where was this at then?
20	MS. ZAMORA: He's the county executive.
21	THE COURT: County executive-
22	MS. ZAMORA: Yes (inaudible)-
23	THE COURT: all right so you worked in the
24	county executive office?
25	MS. ZAMORA: Correct.

-25

1	THE COURT: All right now you said you have
2	family members that are in law enforcement?
3	MS. ZAMORA: Correct.
4	THE COURT: Who would they be ma'am?
5	MS. ZAMORA: My brother-in-law is a Flint
6	Police officer and I have a cousin who is with the
7	Genesee County Sheriff's Department and a former, a
8	cousin also that retired as a parole officer.
9	THE COURT: All right. Do they talk to you
10	about their work ma'am?
11	MS. ZAMORA: No.
12	THE COURT: Would, if you heard this case and
13	you were convinced that the prosecution had failed to
14	prove beyond a reasonable doubt Mr. Pouncy's guilt, could
15	you come back with a verdict of not guilty?
16	MS. ZAMORA: Yes.
17	THE COURT: Would you be concerned about what
18	your relatives might have to say to you about that ma'am?
19	MS. ZAMORA: No.
20	THE COURT: You could look them in the eye and
21	say I, this is my decision ma'am?
22	MS. ZAMORA: Yes.
23	THE COURT: All right um is there any other
24	reason you can think of why you shouldn't serve ma'am?
25	MS. ZAMORA: No.

1	THE COURT: And again I guess I'll just ask my
2	drop dead question, you've heard it already. If you were
3	sittin' where Mr. Pouncy is seated, would you be
4	satisfied to have you as a juror knowing what you know
5	about yourself ma'am?
6	MS. ZAMORA: Yes.
7	THE COURT: And uh, and the same for Mr.
8	Larobardiere who represents the People of the State of
9	Michigan, would you be satisfied to have you serve ma'am?
10	MS. ZAMORA: Yes.
11	THE COURT: So you would intend to be fair to
12	both sides, is that what I'm hearing?
13	MS. ZAMORA: Yes I would.
14	THE COURT: Okay any questions Mr.
15	Larobardiere?
16	MR. LAROBARDIERE: No (inaudible).
17	THE COURT: Any questions Mr. Breczinski?
18	MR. BRECZINSKI: None Your Honor.
19	THE COURT: Challenge for cause Mr.
20	Larobardiere?
21	MR. LAROBARDIERE: No thank you Judge.
22	THE COURT: Challenge for cause Mr. Breczinski?
23	MR. BRECZINSKI: None Your Honor.
24	THE COURT: Preemptory challenge to you Mr.
25	Larobardiere.

1	MR. LAROBARDIERE: People pass.
2	THE COURT: Peremptory challenge to you Mr.
3	Breczinski.
4	MR. BRECZINSKI: We would thank and excuse
5	Kristie Zamora.
6	THE COURT: All right Ms. Zamora I want to
7	thank you. If you'll report to the second floor they'll
8	let you know what you need to do ma'am.
9	MS. ZAMORA: Thank you.
10	COURT CLERK: Juror B53, Tara McKee.
11	THE COURT: Spell that last name.
12	COURT CLERK: M-c-K-e-e.
13	THE COURT: Okay and good afternoon Ms. McKee.
14	MS. MCKEE: Hi.
15	THE COURT: And if you'll take the seat that's
16	vacated by Ms. Zamora. And we want to welcome you to the
17	Genesee County Circuit Court. You've heard the questions
18	that I asked, Mr. Larobardiere and Mr. Breczinski asked
19	is that correct?
20	MS. MCKEE: Yes.
21	THE COURT: Would you have answered any of
22	those questions any differently than the rest of the jury
23	panel as a whole?
24	MS. MCKEE: Yes.
25	THE COURT: And what question would you answer

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1
         differently ma'am?
                   MS. MCKEE: Um I think my nephew might know
 2
         him.
 3
                               All right so you might know him
                   THE COURT:
 4
         then?
 5
                               I think my nephew might, not me.
 6
                   MS. MCKEE:
7
                   THE COURT:
                               All right and what's your nephew's
         name?
 8
9
                   MS. MCKEE: Michael Collins but, let me
10
         explain, I'm just (inaudible) though 'cause the other
         night I was talkin' to him, he said-
11
12
                   THE COURT: Oh wait just one second ma'am
                  I don't want you to talk about what he said okay
13
         please no. But let me just ask you, you say that you
14
         believe that Michael Collins might know Mr. Pouncy?
15
                   MS. MCKEE: Might, I'm not for sure though.
16
                   THE COURT: You're not for sure. All right-
17
18
                   MS. MCKEE: You don't want me to tell you why I
         think that?
19
20
                   THE COURT: No I don't. Now let me ask you
21
         ma'am, now if, if, let's assume that you were to re,
22
         remain as a juror on this case and you were to sit
23
         through this trial, and let's assume that after you had
         heard all of the evidence you go home and for some reason
24
25
         you find out yep, in fact Mr. Collins does know Mr.
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Pouncy, all right? Let's assume that after you've heard all the evidence you were convinced beyond a reasonable doubt that Mr. Pouncy was quilty, would you still come back with a verdict of guilty?

MS. MCKEE: Yes but I don't want to be in a situation like that-

THE COURT: Well just one second ma'am I don't, all right so, and let's assume you heard the evidence and you felt the prosecutor did not prove beyond a reasonable doubt Mr. Pouncy was guilty, could you come back with a verdict of not guilty?

> MS. MCKEE: Yes.

THE COURT: All right. And you made a comment that you don't want to be in that situation. Are you saying, and all I want is a yes or no, are you saying that you don't want to have to make the decision or to judge the facts in this case?

> MS. MCKEE: Yes.

THE COURT: All right and is it because there, because it involves Mr. Pouncy who is an African American male or is it because you're concerned that Mr. Collins might know Mr. Pouncy?

MS. MCKEE: Well my nephew's done stuff too in the past too so-

> And I, ma'am I don't want you to THE COURT:

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LASER BOND FORM B
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talk about all that okay please? Okay? Really I don't 1 and my concern is is that I don't want you to in any way poison this jury okay? 3 (Inaudible). MS. MCKEE: 4 THE COURT: All right? That's my concern okay? 5 All right so now again, in answer to my question, is that 6 7 a yes or a no? 8 MS. MCKEE: What's the question? 9 THE COURT: All right. The question is is simply if uh, would you have any concern about, well I'm 10 11 not sure if I remember my question 'cause I asked that 12 question and you gave me the answer. I'm sorry. MS. MCKEE: 13 THE COURT: 14 That's okay. Yes? Yeah thank you. See this is why I have her over here, to help me. 15 got a much more better memory than I do. Would you have 16 any problem judging this case simply because if you found 17 out later that Mr. Collins did know him would you, would 18 19 that create a problem for you judging this case? 20 MS. MCKEE: No. THE COURT: 21 Um ma'am you heard me make the comment earlier that a lot of times there's a concern 22 about having African Americans serve on the jury, you 23 24 understand what I'm saying?

Um hm.

MS. MCKEE:

1	THE COURT: And uh, and we don't like to remove
2	anyone really but and we have, certainly have a concern
3	about African Americans also. We don't want to remove
4	people unless we have to, do you understand that? All
5	right now I'm gonna ask you my drop dead question. If
6	you were Mr. Pouncy, would you be satisfied to have you
7	sit as a juror in this case, knowing what you know ma'am?
8	MS. MCKEE: Probably not.
9	THE COURT: All right if you were Mr.
10	Larobardiere, would you be satisfied having you sit as a
11	juror in this case knowing what you know ma'am?
12	MS. MCKEE: No.
13	THE COURT: All right I'm gonna excuse you
14	ma'am. Thank you for being honest okay? Go right ahead
15	Mary.
16	MS. MCKEE: Sorry.
17	THE COURT: No that's okay ma'am, thank you for
18	being honest.
19	COURT CLERK: Juror G226, Jill Harrison.
20	THE COURT: And good afternoon Ms. Harrison.
21	MS. HARRISON: Good afternoon.
22	THE COURT: And that was quick, thank you, you
23	move very quickly. Ms. Harrison I want to welcome you to
24	the Circuit Court and you've heard the questions I asked,
25	Mr. Larobardiere asked and Mr. Breczinski asked is that

1	correct?
2	MS. HARRISON: Correct.
3	THE COURT: Would you have answered any of
4	those questions any differently?
5	MS. HARRISON: Yes.
6	THE COURT: All right go right ahead.
7	MS. HARRISON: I was a police dispatcher for
. 8	two years with all the officers from Mt. Morris Township
9	and could have possibly answered the 911 call from
10	(inaudible).
11	THE COURT: On this case?
12	MS. HARRISON: Yes.
13	THE COURT: All right.
14	MS. HARRISON: For Genesee County 911.
15	THE COURT: Then I'm gonna excuse you. Thank
16	you ma'am.
17	MS. HARRISON: Yep.
18	THE COURT: Okay Mary Lee.
19	COURT CLERK: Juror H251, Sandra Duke.
20	THE COURT: And good afternoon Ms. Duke.
21	MS. DUKE: Afternoon.
22	THE COURT: And Ms. Duke we want to welcome you
23	to the Circuit Court. You've heard the questions that I
24	asked, Mr. Larobardiere asked and Mr. Breczinski asked is
25	that correct?

1	MS. DUKE: Yes.
2	THE COURT: Would you have answered any of
3	those questions any differently than the rest of the jury
4	panel as a whole?
5	MS. DUKE: No.
6	THE COURT: Can you be here with us for the
7	time I've indicated?
8	MS. DUKE: Yes.
9	THE COURT: Can you be fair to both the
10	prosecution and the defendant in this case?
11	MS. DUKE: Yes.
12	THE COURT: Is there any reason you can think
13	of why you shouldn't serve on this jury ma'am?
14	MS. DUKE: No.
15	THE COURT: Mr. Larobardiere any questions?
16	MR. LAROBARDIERE: None Your Honor.
17	THE COURT: Mr. Breczinski?
18	MR. BRECZINSKI: None Your Honor.
19	THE COURT: Preemptory challenge to you Mr.
20	Larobardiere.
21	MR. LAROBARDIERE: People pass.
22	THE COURT: Preemptory challenge to you Mr.
23	Breczinski.
24	MR. BRECZINSKI: Thank and excuse juror in seat
25	number 5, Donna Fox.

1	THE COURT: I'm sorry Mr. Breczinski?
2	MR. BRECZINSKI: Ms. Fox.
3	THE COURT: Okay Ms. Fox in seat number 5,
4	thank you very much and Ms. Fox thank you and if you'll
5	go to the second floor they'll let you know what you need
6	to do ma'am.
7	MS. FOX: Okay thank you.
8	THE COURT: Yes ma'am. And ladies and
9	gentlemen we're getting close. Just so, so you're
10	wondering, we're very close okay? Thank you.
11	COURT CLERK: B60, Robert Schmidt, S-c-h-m-i-d-
12	t.
13	THE COURT: And good afternoon Mr. Schmidt.
14	MR. SCHMIDT: Good afternoon Your Honor.
15	THE COURT: And sir we welcome you also to the
16	Genesee County Circuit Court. You heard the questions
17	that I asked, Mr. Larobardiere asked and Mr. Breczinski
18	asked is that correct?
19	MR. SCHMIDT: Correct.
20	THE COURT: Would you have answered any of
21	those questions any differently than the rest of the jury
22	panel as a whole?
23	MR. SCHMIDT: No.
24	THE COURT: Can you be here with us for the
25	time that I've indicated?

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MR. SCHMIDT: Yes.
1
                   THE COURT: Can you be fair to both the
2
         prosecution and the defendant in this case?
3
4
                   MR. SCHMIDT: Yes.
5
                   THE COURT: Is there any reason you can think
         of why you shouldn't serve on this jury sir?
6
                   MR. SCHMIDT: No. I would have to point out to
7
         the Court that I was a defendant in a case that went
8
         before a Magistrate in Sturgeon Falls in December of
9
         2003.
10
                   THE COURT:
                               Okay. Were you satisfied with the
11
         way that case was resolved?
12
                   MR. SCHMIDT: Yes.
13
14
                   THE COURT: Do you harbor any ill will towards
         the prosecution, police, judges, attorneys?
15
                   MR. SCHMIDT: No.
16
                   THE COURT: Would you have a tendency to
17
         identify more with the defense in this case because you
18
         were a defendant sir?
19
                   MR. SCHMIDT: No.
20
                   THE COURT: Would you be fair to both sides?
21
                   MR. SCHMIDT: Yes.
22
                   THE COURT: In other words even handed on both
23
         sides?
24
25
                   MR. SCHMIDT: Yes.
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THE COURT: All right. Mr. Larobardiere any
1
         questions you would have?
2
                   MR. LAROBARDIERE: Yes Judge. What kind of
         case was it Mr. Schmidt?
4
                   MR. SCHMIDT: It was a violation of fishing
5
         laws in Ontario.
6
7
                   MR. LAROBARDIERE: Okay they take their fishing
         pretty serious up there. I think the Judge covered that
8
         you don't harbor any feelings or strong emotions,
9
         positive, negative, one way or the other from that
10
         outcome?
11
12
                   MR. SCHMIDT: No I don't.
                   MR. LAROBARDIERE: Okay um I'll ask you my
13
         engineer question, the same as I did the other gentleman.
14
         I see you're a retired engineer from Chevrolet?
15
                   MR. SCHMIDT: Yes I am.
16
17
                   MR. LAROBARDIERE: Um and that plant's gone now
18
         correct?
19
                   MR. SCHMIDT: Yes it is.
20
                   MR. LAROBARDIERE: You understand that your
21
         employment, that very technical science is different than
         the science or evidence and elements that'll be presented
22
23
         here, do you understand that?
24
                   MR. SCHMIDT: Correct.
25
                   MR. LAROBARDIERE: Okay.
                                              It's not the same
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	·
1	standard, it's not done of this, I'll say without, with
2	the same scientific detail you understand that?
3	MR. SCHMIDT: Correct.
4	MR. LAROBARDIERE: This is not, this is real
5 .	life, this is not what I'll call CSI where they have all
6	the forensic testing and what not. This will not be a
7	case like that. Do you have a problem with that?
8	MR. SCHMIDT: No.
9	MR. LAROBARDIERE: Bein', bein' an engineer
10	like yourself?
11	MR. SCHMIDT: No, no I don't have any problem.
12	MR. LAROBARDIERE: Okay appreciate it. Thank
13	you.
14	THE COURT: Mr. Breczinski any questions you
15	would have sir?
16	MR. BRECZINSKI: I have no questions of this-
17	THE COURT: Challenge for cause Mr.
18	Larobardiere?
19	MR. LAROBARDIERE: No thank you Judge.
20	THE COURT: Challenge for cause Mr. Breczinski?
21	MR. BRECZINSKI: None Your Honor.
22	THE COURT: Preemptory challenge to you Mr.
23	Larobardiere.
24	MR. LAROBARDIERE: We pass.
25	THE COURT: Preemptory challenge to you Mr.

1	Breczinski.
2	MR. BRECZINSKI: We'll thank and excuse juror
3	in seat number 14, Sandra Duke.
4	THE COURT: All right. Ms. Duke I want to
5	thank you for coming down ma'am and if you'll report to
6	the second floor they'll let you know what you need to do
7	ma'am.
8	MS. DUKE: Thank you.
9	THE COURT: Go right ahead Mary.
10	COURT CLERK: Juror G219, Ann Burnash, B-u-r-n-
11	a-s-h.
12	THE COURT: Good afternoon Ms. Burnash.
13	MS. BURNASH: Hello.
14	THE COURT: And if you'll take Ms. Duke's seat
15	and we want to welcome you to the Circuit Court ma'am.
16	And you've heard the questions that I asked, Mr.
17	Larobardiere asked and Mr. Breczinski asked is that
18	correct?
19	MS. BURNASH: Yes.
20	THE COURT: Would you have answered any of
21	those questions any differently than the rest of the jury
22	panel?
23	MS. BURNAHS: No.
24	THE COURT: Can you be here with us for the
25	time that I've indicated?

1	MS. BURNASH: I don't think so.
2	THE COURT: Okay and what problem do you think
3	might exist ma'am?
4	MS. BURNASH: My, I work eight at night 'til
5	six in the morning-
6	THE COURT: Whoa.
7	MS. BURNASH: and I work Wednesday, Thursday,
8	Friday and Saturday so-
9	THE COURT: Do you have to go to work when
10	you're serving on jury?
11	MS. BURNASH: Yes.
12	THE COURT: Okay do they pay you if you don't?
13	MS. BURNASH: No. I'm a waitress.
14	THE COURT: All right. All right-
15	MS. BURNASH: I'm a single parent.
16	THE COURT: would it create a hardship for you?
17	Okay. Would it create a hardship for you then?
18	MS. BURNASH: Very much financial burden.
19	THE COURT: All right then I'm gonna excuse
20	ma'am but if you'll report to the second floor, let them
21	know when you can come back and serve because I think
22	everyone has an obligation to serve okay?
23	MS. BURNASH: Thank you.
24	THE COURT: All right ma'am thank you.
25	COURT CLERK: Juror G245, Richard Webster.

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THE COURT: Okay and good afternoon Mr. Webster
1
         and I want to welcome you to the Genesee County Circuit
2
         Court. You heard the questions that I asked, Mr.
3
         Larobardiere asked and Mr. Breczinski asked?
4
                   MR. WEBSTER: Yes sir.
5
                   THE COURT: Would you have answered any of
6
         those questions any differently than the rest of the jury
7
         panel?
9
                   MR. WEBSTER: No sir.
10
                   THE COURT: Can you be here with us for the
         time that I've indicated?
11
12
                   MR. WEBSTER: Yes.
                   THE COURT: Can you be fair to both the
13
14
         prosecution and the defendant in this case?
                   MR. WEBSTER: I was a defendant in a case also.
15
                   THE COURT: Okay what kind of case was it sir?
16
                   MR. WEBSTER: Criminal.
17
                   THE COURT: All right and how long ago would
18
         that have been?
19
                   MR. WEBSTER: Eight months ago.
20
                   THE COURT: All right. Would that affect your
21
         ability to be fair or would you tend to side with one
22
         side or the other?
23
                   MR. WEBSTER: I hope not.
24
25
                   THE COURT: All right. Were you satisfied with
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1
         sir.
                   COURT CLERK: Juror H257, Joshua Guerin, G-u-e-
2
         r-i-n.
3
                   THE COURT: And good afternoon, is it Mr.
4
5
         Guerin?
                   MR. GUERIN: Yep.
6
                   THE COURT: All right. We want to welcome you
7
         to the Circuit Court Mr. Guerin. You've heard the
8
         questions that I asked, Mr. Larobardiere asked and Mr.
9
10
         Breczinski asked is that correct?
                   MR. GUERIN: Yes.
11
12
                   THE COURT: Would you have answered any of
         those questions any differently than the rest of the jury
13
14
         panel?
15
                   MR. GUERIN: Yes I was a plaintiff in a civil
16
         case.
17
                   THE COURT: And how long ago would that have
18
         been?
                   MR. GUERIN: In '97.
19
                   THE COURT: Were you satisfied with the way in
20
21
         which it was resolved?
                   MR. GUERIN: No.
22
                   THE COURT: Do you harbor any ill will towards
23
         the Court system as a result of it?
24
25
                   MR. GUERIN:
                                No.
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1	THE COURT: Can you be fair to both the
2	prosecution and the defendant in this case?
3	MR. GUERIN: Yes.
4	THE COURT: Is there any reason you can think
5	of why you shouldn't serve in this case sir?
6	MR. GUERIN: I'm no worse than anybody else?
7	THE COURT: All right. Can you be here with us
8	for the time I've indicated?
9	MR. GUERIN: Yes.
10	THE COURT: All right any questions you would
11	have Mr. Larobardiere?
12	MR. LAROBARDIERE: No Your Honor.
13	THE COURT: Mr. Breczinski?
14	MR. BRECZINSKI: None Your Honor.
15	THE COURT: Preemptory challenge, or challenge
16	for cause Mr. Larobardiere?
17	MR. LAROBARDIERE: No thank you Your Honor.
18	THE COURT: Challenge for cause Mr. Breczinski?
19	MR. BRECZINSKI: None Your Honor.
20	THE COURT: All right preemptory challenge to
21	you Mr. Larobardiere?
22	MR. LAROBARDIERE: People pass.
23	THE COURT: We have a jury. I want to thank
24	all of you who are in the audience - I'm sorry? Why
25	don't you come on up, both you and Mr. Larobardiere

	<b>.</b>
1	please? Go off the record for a second Trisha. Actually
2	we got to continue on a little bit further ladies and
3	gentlemen. Preemptory challenge to you Mr. Breczinski.
4	MR. BRECZINSKI: Thank and excuse juror in seat
5	number 8, Mr. Nordstrom.
6	THE COURT: Okay Mr. Nordstrom thank you very
7	much sir and if you'll report to the second floor they'll
8	let you know what you need to do. Um hm. Go right
9	ahead.
10	COURT CLERK: Juror H272, Joanne Potts.
11	THE COURT: And good afternoon Ms. Potts. You
12	have to kind of weave through there. I want to welcome
13	you to the Genesee County Circuit Court Ms. Potts and
14	you've heard the questions that I asked, Mr. Larobardiere
15	asked and Mr. Breczinski asked is that correct?
16	MS. POTTS: Yes.
17	THE COURT: Would you have answered any of
18	those questions any differently than the rest of the jury
19	panel as a whole?
20	MS. POTTS: No.
21	THE COURT: Can you be here with us for the
22	time that I've indicated?
23	MS. POTTS: Yes.
24	THE COURT: Can you be fair to both the
25	prosecution and the defendant in this case?

1	MS. POTTS: I don't, I don't think so.
2	THE COURT: Okay um would, and would it be the
3	prosecution or the defense?
4	MS. POTTS: Um the defense.
5	THE COURT: Okay have you had any experiences
6	that causes you to feel this way one way or the other?
7	MS. POTTS: Yes. We've lived in our
8	neighborhood about forty years and a year ago there was a
9	family moved in next door and the young son robbed our
10	place.
11	THE COURT: All right so you were the victim of
12	a robbery recently?
13	MS. POTTS: Yes.
14	THE COURT: All right. I'm gonna excuse you
15	ma'am. You may report to the second floor. Thank you
16	very much and thank you for bein' honest. Go right ahead
17	Cindy.
18	COURT CLERK: H271, Dwight Neisler, N-e-i-s-l-
19	e-r.
20	THE COURT: All right good afternoon Mr. is it
21	Neisler or Neisler?
22	MR. NEISLER: Neisler.
23	THE COURT: Neisler all right. Thank you sir.
24	And we welcome you to the Genesee - well let's see, you
25	got to come all the way down here Mr. Neisler. I was

1	gettin' ready to say we're missin' a person.
2	MR. NEISLER: I wasn't watchin' where
3	(inaudible).
4	THE COURT: Oh that's okay. We welcome you to
5	the Genesee County Circuit Court and you've heard the
6	questions that I asked, Mr. Larobardiere asked and Mr.
7	Breczinski asked is that correct?
8	MR. NEISLER: Yes.
9	THE COURT: Would you have answered any of
10	those questions any differently than the rest of the jury
11	panel?
12	MR. NEISLER: No sir.
13	THE COURT: Can you be here with us for the
14	time I've indicated?
15	MR. NEISLER: It's a little bit difficult, I'm
16	a landlord and right now I have one house that I had
17	advertised in the paper-
18	THE COURT: Yes sir.
19	MR. NEISLER: and I have another, it's ready
20	and I have another that I'm tryin' to get cleaned out.
21	THE COURT: Okay. Sounds like I might keep you
22	here for that if that's the reason-
23	MR. NEISLER: All right.
24	THE COURT: just so you know. Any other reason
25	you can think of sir?

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1
                   MR. NEISLER: I've been a plaintiff in numerous
         civil-
2
                   THE COURT: Yes I can imagine. Would that
3
         affect your ability to be fair?
4
                   MR. NEISLER: No.
5
6
                   THE COURT:
                               Can you be fair to both the
7
         prosecution and the defendant in this case?
                   MR. NEISLER: I believe so.
8
9
                   THE COURT: All right. Is there any other
10
         reason you can think of why you shouldn't serve?
                   MR. NEISLER: Other than my time away from-
11
                   THE COURT: Time away from work?
12
                   MR. NEISLER: Yes.
13
                   THE COURT: Okay. Well I, all I can assure you
14
15
         is that I will do everything I can to be as efficient as
         possible to get you in and out so that you can get back
16
         to your private life okay? Mr. Larobardiere any
17
         questions you would have?
18
19
                   MR. LAROBARDIERE: I'll follow up with that and
         say I will also try to be efficient and I don't
20
         anticipate the case going through the end of the week but
21
         it's a possibility. Is that gonna, you gonna be able
22
23
         accommodations with your business?
24
                   MR. NEISLER: Well it's always, I mean it's
         like this all the time. I never know from one week to
25
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(Judge Archie L. Hayman; 01-24-06; 12:39:21 p.m.)
1
         the next what's, you know somebody can give me notice and
2
         move out or not give me notice and move out or whatever.
3
         Right now I, I do have one that is ready to be rented and
4
         being here of course I can't answer phone calls.
5
                   THE COURT: Well one thing you're gonna know is
6
         you've got at least Thursday morning so you will, 'cause
7
         you won't have to be here until one o'clock on Thursday
8
         and you will be out of here by five every day so at least
9
         you'll know that at five o'clock you're out the door.
10
                   MR. LAROBARDIERE: Um thinkin' about your
11
12
         business, is that gonna be in the back of your mind
         outweighing, listening to the evidence comin' in?
13
                   MR. NEISLER: No I don't think so.
14
                   MR. LAROBARDIERE: Pardon?
15
                   MR. NEISLER: I don't think so.
16
                   MR. LAROBARDIERE: Okay fair enough.
17
                                                          Thank
18
         you.
19
                   THE COURT: Mr. Breczinski any questions?
                   MR. BRECZINSKI: No Your Honor.
20
                   THE COURT: Challenge for cause Mr.
21
         Larobardiere?
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                   MR. LAROBARDIERE: No thank you Judge.
                   THE COURT: Challenge for cause Mr. Breczinski?
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                   MR. BRECZINSKI:
                                    No thank you.
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1	THE COURT: Preemptory challenge Mr.
2	Larobardiere?
3	MR. LAROBARDIERE: Pass Judge.
4	THE COURT: Preemptory challenge to Mr.
5	Breczinski.
6	MR. BRECZINSKI: We thank and excuse juror in
7	seat number 8, Dwight Neisler.
8	THE COURT: Okay Mr. Neisler thank you sir and
9	if you'll report to the second floor they'll let you know
10	what you need to do.
11	MR. NEISLER: Thank you.
12	COURT CLERK: B40, Jan Como, C-o-m-o.
13	THE COURT: Okay and good afternoon Ms. Como.
14	MS. COMO: Good afternoon.
15	THE COURT: And if you'll come on up. And we
16	want to welcome you to the Genesee County Circuit Court
17	ma'am.
18	MS. COMO: Thank you.
19	THE COURT: You've heard the questions that I
20	asked, Mr. Larobardiere asked and Mr. Breczinski asked is
21	that correct?
22	MS. COMO: Yes.
23	THE COURT: Would you have answered any of
24	those questions any differently than the rest of the jury
25	panel?

1	MS. COMO: Can I just make a statement?
2	THE COURT: I'm not sure ma'am I don't want you
3	to just make a statement-
4	MS. COMO: Well-
5	THE COURT: let me, just first of all answer
6	my, can, can you, first of all would you have answered
7	any question differently and if so which question would
8	that be?
9	MS. COMO: It's about my work experience, I
10	worked in the County Probation office-
11	THE COURT: Okay.
12	MS. COMO: this was in the sixties-
13	THE COURT: Sure.
14	MS. COMO: County Probation office and also for
15	attorneys and at that time I got very, well I would say I
16	wasn't (inaudible) any more. But that's a long time ago.
17	I'm hoping that that won't influence me.
18	THE COURT: Well let me just ask you this. Can
19	you judge and decide this case just on the evidence that
20	you see in here in this courtroom?
21	MS. COMO: I hope so. I, I've never had this
22	experience before so-
23	THE COURT: Okay now you understand that if you
24	serve as a juror you have an obligation to decide this
25	case just on the evidence that you see and hear in this

1	courtroom and you can't bring any other experiences or
2	thoughts or anything into this case, do you understand
3	that?
4	MS. COMO: Correct, um hm.
5	THE COURT: And in fact I will even instruct
6	you that if you just happen to be ridin' by when the
7	incident occurred, you can't even talk about that, you
8	know, anything you may have even seen with your own two
9	eyes. You understand what I'm sayin'?
10	MS. COMO: Yes.
11	THE COURT: You have to decide this case just
12	on the evidence as presented in this courtroom.
13	MS. COMO: Yes.
14	THE COURT: Would you make an honest effort to
15	do that ma'am?
16	MS. COMO: Yes.
17	THE COURT: Do you think it's just absolutely
18	impossible for you to do that?
19	MS. COMO: No.
20	THE COURT: Do you believe you can be fair to
21	both the prosecution and the defendant?
22	MS. COMO: Well I've already formed an opinion
23	of one of the attorneys just by watching his actions.
24	THE COURT: But the attorneys are not on-
25	MS. COMO: I'm hoping that-

1	THE COURT: but you understand the attorneys
2	are not on trial.
3	MS. COMO: right but I'm hoping that won't
4	influence me so-
5	THE COURT: Okay. Okay but you understand the
6	attorneys are not on trial?
7	MS. COMO: Right.
8	THE COURT: Okay again, you're not gonna be
9	asked at the end of this trial what do you think about
10	the lawyers okay? You're gonna be asked has the
11	prosecution proven beyond a reasonable doubt the guilt of
12	the defendant and, and I'm talkin' to you but actually
13	I'm talkin' to everybody, you understand that? So do you
14	understand that ma'am?
15	MS. COMO: So it's what the prosecution does to
16	prove it to me?
17	THE COURT: Well the prosecution has the burden
18	of proof.
19	MS. COMO: Right.
20	THE COURT: They have to prove beyond a
21	reasonable doubt each of the elements of the crimes
22	that'll be outlined in the information. And what you
23	have to do as a jury, your only responsibility is to
24	decide what the facts of the case are and once you, along
25	with your other jurors decide what the facts are door

that prove beyond a reasonable doubt the defendant's 1 quilt? Are you understanding what I'm saying? 2 MS. COMO: Yes. 3 THE COURT: You have no responsibility about 4 penalty, you have no responsibility about the lawyers. 5 You've, you know the lawyers are only here to explain 6 their theories and their, and, and their side of the case 7 to you so that you'll be able to understand the evidence 8 9 that comes in. Do you understand that? 10 MS. COMO: Yes. THE COURT: Um all right so knowing that, does 11 12 that make you feel a little more comfortable about hearing this case? 13 14 MS. COMO: Yes. 15 THE COURT: Now let me ask you this. I'm going to my drop dead question again. Now if you were Mr. 16 17 Pouncy sitting over there knowing what you know, would you be satisfied to have you as a juror? 18 19 MS. COMO: Yes. 20 THE COURT: If you were Mr. Larobardiere knowing what you know would you be satisfied to have you 21 as a juror? 22 23 MS. COMO: Yes. So you believe you can be fair to 24 THE COURT: 25 both sides?

there any reason you can think of why you shouldn't

Any other reason at all ma'am?

MS. COMO: All right. Is there any other, is

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                   MS. COMO:
                              No.
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                   THE COURT: All right. Mr. Larobardiere any
         questions you would have?
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                   MR. LAROBARDIERE: No thank you Judge.
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                   THE COURT: Mr. Breczinski?
                   MR. BRECZINSKI: None Your Honor.
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                   THE COURT: All right peremp, challenge for
         cause Mr. Larobardiere?
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                   MR. LAROBARDIERE: No thank you Judge.
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                   THE COURT: Challenge for cause Mr. Breczinski?
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                   MR. BRECZINSKI: No thank you Your Honor.
                   THE COURT: Preemptory challenge to you Mr.
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         Breczinski.
                                    Thank and excuse juror in seat
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                   MR. BRECZINSKI:
         number 7, Patricia Ayre.
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                   THE COURT: Okay Ms. Ayre we want to thank you
         for coming down ma'am. If you'll report to the second
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         floor they'll let you know what you need to do and thank
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         you for your honest, thank you for coming down Ms. Ayre.
22
23
         Mr., uh Cindy go right ahead.
                   COURT CLERK: H248, Anthony Benson.
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                   THE COURT: Good afternoon Mr. Benson.
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1	to welcome you to the Genesee County Circuit Court. All
2	right sir you heard the questions that have been asked by
3	me and Mr. Larobardiere and Mr. Breczinski is that
4	correct?
5	MR. BENSON: Yes.
6	THE COURT: Would you have answered any of
7	those questions any differently?
8	MR. BENSON: No.
9	THE COURT: Can you be fair - yeah - can you be
10	fair to both the prosecution and the defendant in this
11	case?
12	MR. BENSON: Yes.
13	THE COURT: Is there any reason you can think
14	of why you shouldn't serve?
15	MR. BENSON: No.
16	THE COURT: Ask Trish to come up this way
17	please. All right. I'm gonna ask both counsel to
18	approach please. Mr. Benson the prosecutor just
19	indicated to me that you and he went to high school
20	together, did, were you aware of that?
21	MR. BENSON: Not until just now.
22	THE COURT: Not until just now okay. Does the
23	fact that you went to high school with him, would that in
24	any way affect your ability to be fair?
25	MR. BENSON: No.

1	THE COURT: If you, if you were to sit through
2	this trial and you were convinced beyond a reasonable
3	doubt, you were not convinced beyond a reasonable doubt
4	that Mr. Pouncy was guilty, would you be able to come
5	back with a verdict of not guilty?
• 6	MR. BENSON: Yes.
7	THE COURT: And of course if you found that the
8	prosecution had proved beyond a reasonable doubt his
9	guilt, you would come back with a verdict reflecting
10	that?
11	MR. BENSON: Yes.
12	THE COURT: Would you judgment in any way be
13	affected by the fact that Mr. Larobardiere went to the
14	same high school you went to?
15	MR. BENSON: No.
16	THE COURT: Would you have any concerns that if
17	you voted against him that he may have somethin' to say
18	to you?
19	MR. BENSON: No.
20	THE COURT: All right. Any questions you would
21	have Mr. Larobardiere?
22	MR. LAROBARDIERE: No Your Honor.
23	THE COURT: Any questions you would have Mr.
24	Breczinski?
25	MR. BRECZINSKI: No Your Honor.

1	THE COURT: All right challenge for cause Mr.
2	Larobardiere?
3	MR. LAROBARDIERE: No thank you.
. 4	THE COURT: Challenge for cause Mr. Breczinski?
5	MR. BRECZINSKI: None Your Honor.
6	THE COURT: Preemptory challenge to you Mr.
7	Breczins, Mr. Larobardiere?
8	MR. LAROBARDIERE: People pass.
9	THE COURT: Preemptory challenge to you Mr.
10	Breczinski?
11	MR. BRECZINSKI: Thank and excuse juror in seat
12	number 7, Anthony Benson.
13	THE COURT: All right thank you Mr. Benson if
14	you'll report to the second floor they'll let you know
15	what you need to do. Go right ahead Cindy.
16	COURT CLERK: H268, Terry Miller.
17	THE COURT: I thought we had a Terry Miller.
18	Let me see here, I guess not. Good afternoon Mr. Miller.
19	MR. MILLER: Good afternoon.
20	THE COURT: I want to welcome you also to the
21	Genesee County Circuit Court, I want you to get a chance
22	to get a seat and-
23	MR. MILLER: I guess.
24	THE COURT: Yeah I apologize for that. Sir we
25	want to welcome you to our Court and you've had a chance

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to hear my questions, Mr. Larobardiere and Mr. Breczinski
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         is that correct? Would you have answered any of those
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         questions any differently than the rest of the jury
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         panel?
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                   MR. MILLER:
                                 No.
                                Can you be here with us for the
                   THE COURT:
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         time I've indicated?
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                   MR. MILLER:
                                 Yes.
                   THE COURT: Can you be fair to both the
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         prosecution and the defendant?
                   MR. MILLER: I'm not sure.
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                   THE COURT:
                               Okay.
                                I, I've had my house broke into
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                   MR. MILLER:
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         twice and my car broke in, a hotel room broke into.
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                   THE COURT: All right I understand that.
         you able to separate what happened to you from this
         particular case?
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                   MR. MILLER:
                                (Inaudible).
                   THE COURT: All right in other words you have
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         no indication that anybody in this courtroom did what,
20
         those things to you is that correct? Would you harbor
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         any ill will towards anyone here because of that sir?
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23
                   MR. MILLER:
                                (Inaudible).
                   THE COURT: After you listened to all the
24
         evidence if you were convinced the prosecution had not
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proven beyond a reasonable doubt Mr. Pouncy's quilty, can 1 you come back with a verdict that reflects that? 2 MR. MILLER: Yes. THE COURT: Would, can you set aside what 4 5 happened to you and just decide this case based on the evidence that you see here in this courtroom? 6 (Inaudible). 7 MR. MILLER: THE COURT: Now you understand as you serve as 8 a juror that you will be res, you will be required to do 9 that do you understand that? 10 MR. MILLER: Yes. 11 12 THE COURT: So would you follow my instructions in that regard sir? 13 MR. MILLER: Yes sir. 14 THE COURT: All right any questions you would 15 have Mr. Larobardiere? 16 17 MR. LAROBARDIERE: Just one. I'll just ask you my engineering question. Do you remember me talking to 18 19 Mr. Miller and Schmidt as a, as an engineer yourself? 20 That that science is different than criminal science if 21 you will whereas the evidence comes in by testimony and

you as an engineer, you may have some more questions that, what the other people with their backgrounds might have. And it may not get all answered. Is that gonna be a problem for you?

1	MR. MILLER: No.
2	MR. LAROBARDIERE: And you're willing to do
3	your duty and follow the, the law as the Judge gives it
4	to you and rule on the evidence as it comes in?
5	MR. MILLER: Right.
6	MR. LAROBARDIERE: Fair enough. Thank you
7	Judge.
8	THE COURT: All right Mr. Breczinski any
9	questions you would have?
10	MR. BRECZINSKI: Yes Your Honor. In this
11	matter I know you're saying you, you'd try to set this
12	aside, your past experiences but do you think it could
13	affect your judgment in this case?
14	MR. MILLER: No.
15	MR. BRECZINSKI: That it might make you less
16	(inaudible)?
17	MR. MILLER: Not really.
18	MR. BRECZINSKI: Not really? I have nothing
19	further.
20	THE COURT: Challenge for cause Mr.
21	Larobardiere?
22	MR. LAROBARDIERE: No thank you.
23	THE COURT: Challenge for cause Mr. Breczinski?
24	Peremptory challenge to you Mr. Larobardiere.
25	MR. LAROBARDIERE: People pass.

THE COURT: All right we do have a jury ladies and gentlemen. I want to thank those of you in the audience, we're down to three I think, for bein' so patient with us and I'm gonna excuse you. You can go to the second floor and thank you very much. Those of you that are in the box, I'm gonna have Cindy to swear you in and then when you come back after lunch we're then gonna uh, uh, I'm gonna give you some brief instructions and we're gonna start with the opening statements in this I want to remind you we're gonna go up to five At five o'clock I will be letting you go home so if any of you have someone to come pick you up, you tell 'em at five o'clock you'll be ready to go and you will be out the door okay? With that if you would all stand please in the jury box and Cindy you may proceed.

You solemnly swear or affirm that in this action now before the Court you will justly decide the questions submitted to you that unless you are discharged by the Court from further deliberation, you will render a true verdict and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the Court, so help you God?

JURY: Yes. I do.

THE COURT: Okay ladies and gentlemen at this

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time Trish is gonna escort you out. Trisha, and I just want to introduce you to, this is Trisha Macon, she is my law clerk. She's gonna be acting as the bailiff. She is an attorney already licensed to practice law. She's gonna take you out to lunch and buy you lunch and she's gonna pay for it 'cause we pay our law clerks good money so if you want dessert or whatever, Trisha's got you If everyone would stand please? And Trisha covered. where are they goin' to lunch, do you know? LAW CLERK: Masonic. THE COURT: Masonic, okay. You can follow her

out and have a good lunch ladies and gentlemen. Yeah you may want to put in a request for tomorrow. All right is there anything else to take up at this time Mr.

Larobardiere?

MR. LAROBARDIERE: Nothing (inaudible).

THE COURT: Mr. Breczinski? Anything to take up Mr. Breczinski?

MR. BRECZINSKI: Your Honor my client has wanted me to try and get a more recent picture of this gentleman and I don't know his-

THE COURT: Say what now Mr. Breczinski?

MR. BRECZINSKI: (Inaudible) Jamaar. I don't know if the Sheriff's Department has any pictures on (inaudible) or booking or, or what.

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THE COURT: Um I, I really don't either uh that's something that you'll probably have to check with them and see if they, if they do have anything on this person if they have a picture. Is there anything else you need to take up? MR. BRECZINSKI: No Your Honor. THE COURT: All right then we'll be recessed until two o'clock. We'll get started back at two. gonna ask the deputies, we don't have to call down, just bring him up at two o'clock and we're ready to go okay? So we don't, so we don't have to call down just bring him up at two and have him ready. And we're off the record. (At 12:55 p.m., Court recessed) (At 2:14 p.m., Court reconvened) THE COURT: Okay we're on the record, Mr.

Larobardiere is there anything you need to take up before we get the jury up here?

MR. LAROBARDIERE: Judge I just think Mr. Pouncy keeps making inappropriate comments to the officer

in charge so I just think you should know that.

THE COURT: Okay Mr. Breczinski did you have anything you want to bring to my attention?

MR. BRECZINSKI: No Your Honor.

THE COURT: All right. I'm gonna ask that no one make any comments to each other across the tables.

It's not appropriate and uh, so I'm gonna ask that that 1 not occur. You understand that Mr. Pouncy? 2 MR. POUNCY: Yes. Can um that sign be taken 3 out 'cause I'm not guilty man. 4 THE COURT: I'm sorry? 5 MR. POUNCY: Can that sign be taken, this moved 6 'cause I'm not guilty. It say if Omar Pouncy guilty. 7 THE COURT: Mr. Pouncy this is the prosecutor's 8 side of the case. You're not runnin' anything in here 9 okay? 10 MR. POUNCY: I'm just askin' though-11 12 THE COURT: No, no. He has the right to 13 present his side of the case, your lawyer will present his side and if your lawyer believes there's somethin' 14 15 wrong goin' on he'll get up and say somethin'. He doesn't need you to jump in okay? You're not a lawyer 16 17 okay? MR. POUNCY: Would I, don't I have the right to 18 represent myself though? I'm just askin', I'm just 19 askin'. 20 21 THE COURT: Mr. Pouncy if you decide that you 22 want to represent yourself then you're gonna represent yourself in total. The only thing Mr. Breczinski will be 23 doin' is sitting there okay? 24 25 MR. POUNCY: Okay.

THE COURT: And I can tell you right now that if you represent yourself you really are a fool okay and the reason is because you don't have a clue as to what you're doin'.

MR. POUNCY: I know I'm not guilty.

THE COURT: Well Mr. Pouncy nobody's sittin' here sayin' whether you're guilty or not. That's what the jury is here for to decide that.

MR. POUNCY: (Inaudible).

THE COURT: Sir please I'm not interested in gettin' into a long diatribe with you okay?

MR. POUNCY: All right.

THE COURT: All right? Okay let's get the jury up here Trish.

(At 2:16 p.m., Court recessed)

(At 2:21 p.m., Court reconvened)

THE COURT: Okay we are back on the record in the People of the State of Michigan versus Omar Rashad Pouncy, case number 05-017154-FC. Ladies and gentlemen we're ready to begin the trial in this matter. I want to start out by giving you some brief instructions. Once I've given you those instructions, we'll then begin with the opening statements. This is a criminal case. The paper used to charge the defendant with a crime is called an information. The information in this case charges the

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defendant in this particular case with eleven counts. The information reads as follows: On or about September 29th of 2005 through October 11th of 2005, in Mt. Morris Township in the County of Genesee, count 1, carjacking, it's alleged that Omar Rashad Pouncy did in the course of committing a larceny of a 2004 Corvette automobile, a motor vehicle, use force or violence against Maria Sandstrom, a person in lawful possession of the motor vehicle, contrary to MCL 750.529(a). Count 2, carjacking. It's alleged that Omar Rashad Pouncy, on or about September 29th of '05 through October 11th of '05 in Mt. Morris Township in the County of Genesee, did in the course of committing a larceny of a 2003 Ford automobile, a motor vehicle, use force or violence against, or used the threat of force or violence against Earl Brady, a person in lawful possession of the motor vehicle, contrary to MCL 750.529(a). Count 3, carjacking. alleged that on or about September 29th of '05 through October 11th of '05 in Mt. Morris Township, the County of Genesee, that Omar Rashad Pouncy did in the course of committing a larceny of a 1973 Cadillac automobile, a motor vehicle, use force or violence against Thomas Sandstrom, a person in lawful possession of the motor vehicle, contrary to MCL 750.529(a). Count 4, armed robbery. It is alleged that on or about September 29th of

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'05 on Oct uh through October 11th of '05 in Mt. Morris Township in the County of Genesee, that Omar Rashad Pouncy did in the course of committing a larceny of money and/or purse, use force or violence against a person present, Maria Sandstrom, and in the course of that conduct possessed a gun, a dangerous weapon. Count 5, it is alleged that on or about September 29th of '05 through October 11th of '05 in Mt. Morris Township in the County of Genesee that Omar Rashad Pouncy did in the course of committing a larceny of a cell phone, assault or put in fear a person present, Earl Brady, and in the course of that conduct possessed a gun, a dangerous weapon, contrary to MCL 750.529. Count 6, armed robbery. alleged that on or about September the 29th of '05 through October 11th of '05 in Mt. Morris Township in the County of Genesee that the defendant Omar Rashad Pouncy did in the course of committing a larceny of money and or wallet use force or violence against a person present, Thomas Sandstrom, in the course of that conduct possessed a pistol a dangerous weapon, contrary to MCL 750.529. Count 7, armed robbery. It is alleged that on or about September 29th of '05 through October 11th of '05 in Mt. Morris Township, the County of Genesee, that Omar Rashad Pouncy did in the course of committing a larceny of a cell phone assault or put in fear a person present,

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Patrick Wendell, and in the course of that conduct possessed a pistol, a dangerous weapon, contrary to MCL 750.529. Count 8 is felony firearm. It is alleged that on or about September  $29^{\rm th}$  of '05 through October  $11^{\rm th}$  of '05 in Mt. Morris Township in the County of Genesee that Omar Rashad Pouncy did carry or have in his possession a firearm to wit a pistol at the time he committed or attempted to commit a felony. To wit carjacking and/or armed robbery and/or felon in possession of a firearm. Count 9, felony firearm. It is alleged that on or about September 29th of '05 through October 11th of '05 in Mt. Morris Township in the County of Genesee, that Omar Rashad Pouncy did carry or have in his possession a firearm to wit a pistol at the time he committed or attempted to commit a felony to wit car jacking and/or armed robbery and/or felon in possession of a firearm. Count 10, carjacking. It is alleged that on or about September 29<sup>th</sup> of '05 through October 11<sup>th</sup> of '05 in Mt. Morris Township in the County of Genesee, that Omar Rashad Pouncy, did in the course of committing a larceny of a 1979 Chevrolet Camaro, a motor vehicle, use force or violence against Earl Brady, a person in lawful possession of the motor vehicle, contrary to MCL 750.529(a). Count 11, felon in possession of a firearm. It is alleged that on or about September  $29^{\rm th}$  of '05

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through October 11th of '05 in Mt. Morris Township in the County of Genesee, that Omar Rashad Pouncy did possess a firearm when ineligible to do so because he had been convicted of a specified felony and the requirements for regaining eligibility had not been met, contrary to MCL 750.224(f). The defendant has pled not guilty to these charges. You should clearly understand that the information I have just read to you is not evidence. information is read in every criminal trial so that the defendant and jury can hear the charges. You must not think it is evidence of his guilt or that he must be guilty because he has been charged. A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is This presumption continues throughout the innocent. trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty. Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove his innocence or to do anything. If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty. A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of

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It is not merely an imaginary or possible doubt but a doubt based on reason and common sense. reasonable doubt is just that. A doubt that is reasonable after a careful and considerate examination of the facts and circumstances in this case. Now I will explain some of the legal principles you will need to know and the procedure we will follow in this trial. A trial follows this procedure. First the prosecutor makes an opening statement where he gives his theories about The defendant's lawyer does not have to make an opening statement but he may make an opening statement after the prosecutor makes his or he may wait until These statements are not evidence. They are only meant to help you understand how each side views the Next the prosecutor presents his evidence. prosecutor may call witnesses to testify and may show you exhibits like documents or objects. The defendant's lawyer has the right to cross-examine the prosecutor's witnesses. After the prosecutor has presented all his evidence, the defendant's attorney may also offer evidence but does not have to. By law the defendant does not have to prove his innocence or produce any evidence. If the defense does call any witnesses, the prosecutor has the right to cross-examine them. The prosecutor may also call witnesses to contradict the testimony of the

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defense witnesses. After all the evidence has been presented, the prosecutor and the defendant's lawyer will make their closing arguments. Like the opening statements these are not evidence. They are only meant to help you understand the evidence and the way each side sees the case. You must base your verdict only on the Let's talk about the function of the Court and evidence. My responsibilities as the Judge in this trial are to make sure that the trial is run fairly and efficiently. To make decisions about evidence and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the case. jurors you are the ones who will decide this case. responsibilities as jurors is to decide what the facts of the case are. This is your job and no one else's. must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is. This includes how much you believe what each of the witnesses said. What you decide about any fact in this case is final. When it is time for you to decide the case, you are only allowed to consider the evidence that was admitted in the case. Evidence includes only the sworn testimony of witnesses, the exhibits admitted into evidence and anything else I

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tell you to consider as evidence. Now this is somewhat of a long instruction but after I get done with it I'll only have a few more afterwards and we'll be done so bear with me here. It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness You are free to believe all, none or part of any persons testimony. In deciding which testimony you believe you should rely on your own common sense and every day experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the race, gender or national origin of the witness. There is no fixed set of rules for judging whether you believe a witness but it may help you to think about these questions. A) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness? B) Does the witness seem to have a good memory? C) How does the witness look and act while testifying? Does the witness seem to be making an honest effort to tell the truth, or does the witness seem to evade the questions or arque with the lawyers? D) Does the witness's age or maturity affect how you judge his or her testimony? E) Does the

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(Judge Archie L. Hayman; 01-24-06; 2:31 p.m.) witness have any bias or prejudice or any personal interest in how this case is decided? F) Have there been any promises, threats, suggestions or other influences that affect how the witness testifies? G) In general does the witness have any special reason to tell the truth or any special reason to lie? H) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case? questions the lawyers ask the witnesses are not evidence. Only the answers are evidence. You should not think that something is true just because one of the lawyers asks questions that assumes or suggests that it is. instruction has to do with the Court asking questions, I don't ask questions. This one has to do with the jurors asking questions. I don't allow the jurors to ask questions. And just so you know the reason for that is I don't want you to ask a question and then it may be a question that one of the lawyers may have to object to and I don't want to have him standing up objecting to your question and then have you go back and deliberate on the case. So what I'm gonna ask you to do is to rely on the lawyers to give you the information that you'll need to make an intelligent decision about this case even though maybe not every question you have is gonna be

answered in this case. During the trial the lawyers may object to certain questions or statements made by the other lawyers or witnesses. I will rule on these My rulings for or objections according to the law. against one side or the other are not meant to reflect my opinions about the facts of the case. Sometimes the lawyers and I will have discussions out of your hearing. Also while you're in the jury room I may have to take care of other matters that have nothing to do with this Pay no attention to these interruptions. And I do want you to know that I do respect your time and I don't intend to have you sittin' around waiting for no reason. When you get here we're gonna get you up here and get the case submitted to you so you can get back to your private lives so I just want you to know I do respect your time. You must not discuss the case with anyone, including your family or friends. You must not even discuss it with other jurors until the time comes for you to decide the case. When it is time for you to decide the case, I will send you to the jury room for that purpose. Then you should discuss the case among yourselves but only in the jury room and only when all the jurors are there. When the trial is over you may, if you wish, discuss the case with anyone. If I call for a recess during the trial I'll either send you back to the jury room or allow you

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to leave the courtroom on your own and go about your business, but you must not discuss the case with anyone or let anyone discuss it with you in or in your presence. If someone tries to do that, tell him or her to stop, explain that as a juror you're not allowed to discuss the If he or she continues, leave and report the incident to me as soon as you return to Court. You must not talk to the defendant, the lawyers, the witnesses about anything at all, even if it has nothing to do with the case. It is very important that you get only, that you only get information about the case in Court when you are acting as the jury and when the defendant, the lawyers and I are all here. So if you see any of the parties here at the table, in the courthouse, outside the courtroom or outside the courthouse and they don't speak to you, don't think they're being rude. They just don't want to create the appearance of impropriety on their part. And I think that's really about all that's, if anyone has any problem seeing what's going on please let me know and if you have any physical issues that might make it difficult for you to sit for periods of time please let me know. I don't have a problem with stopping and giving you a break so don't sit there and suffer unnecessarily. If you feel uncomfortable let me know and we'll let you take a break. With that I, are you ready

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to begin with your opening statement Mr. Larobardiere?

MR. LAROBARDIERE: Yes Judge.

THE COURT: Then you may proceed sir.

MR. LAROBARDIERE: Thanks Judge. Every day thousands of people are-

THE COURT: One second please Mr. Larobardiere.

I'm gonna ask that there be no talking period during the opening statements please. Go right ahead Mr.

Larobardiere.

Thanks Judge. Every day MR. LAROBARDIERE: thousands of people advertise their vehicles for sale, used or new vehicles for sale. This is an example of one of the vehicles that was carjacked and advertised for sale as a result of it being advertised. This man right here is a seller's worst nightmare. This man right here went and met buyers advertising their vehicles for sale, convinced them that he was interested in buying the vehicles, convinced them that he wanted to take the vehicle to be checked out by his mechanic, got 'em down to a dead end street, carjacked 'em at gunpoint. He and his stepbrother. When he got 'em to that dead end, he robbed them of their vehicles, we're talkin' about a '79 Camaro, a '73 Cadillac, an '04 Corvette, an '03 truck and trailer. He took all those vehicles, he took the driver of the Corvette's purse and money and everything in her

He robbed her husband's, of her, his wallet, credit cards and money. He took the owners of the truck, the Camaro and the trailer, their cell phones. To top it off, made 'em run into the woods as they took off in their vehicles. This man took advantage of all these sellers that advertised their vehicles and expect to meet a person and in good faith hand of hand negotiation for a vehicle. He took advantage of these people's good faith in a system set up to deal with these vehicles. story starts out on September 29th of 2005. Man in Flint has a customized fabrication shop, a race shop. some friends down in Oakland County has a '79 Camaro for sale. He agrees to have it displayed at the shop for people can see it, high traffic area. And Mr. Pouncy came and dealt with the owner of the shop, used a false name when dealing with the owner, entered into a negotiation about the vehicle. Got the owners to come up from Oakland County with a truck, a trailer, put the vehicle on a, the Camaro the trailer. He was with two other people, one of them being his step brother. name is Wayne Grimes. Wayne Grimes is the driver of Mr. Pouncy to these various locations where these vehicles were displayed for sale. He wants to buy a vehicle, entered in negotiations. First let me go have it checked out by my mechanic. Follow us. They do. On the way to

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the location, which happens to be Kellar Avenue in Mt. Morris Township, he talks to his driver, stepbrother, Wayne Grimes. He talks, they talk together, it's agreed upon, Wayne Grimes is gonna carjack these people at this man's assistance and encouragements. Wayne Grimes will describe the conversation they had in their vehicle on the way to the, the dead end at Keller Avenue, will describe on how all that took place. Idea of that carjacking was this Camaro is a race car he said. It has slicks on it, has a hopped up motor, they were gonna sell the parts for quick cash. That was the agreement. Grimes will tell you he did do that. That he was given a gun, he did carjack 'em, he ordered them to give up their property. They gave up their cell phones to this man, Mr. Pouncy. It was agreed upon in the car on the way to Kellar Avenue that they should give up their cell phones so they couldn't call for help. Wayne Grimes ordered them to do that, they did, they gave 'em to Mr. Pouncy. And Mr. Pouncy got in, drove the vehicle away, the truck, trailer and Camaro. Wayne Grimes had his own vehicle, he drove that away. He'll admit to you that he robbed those people and that he took responsibility for robbin' those people and he's gonna go to prison for it. After that carjacking, October 11th, 2005, Wayne Grimes and Omar Pouncy meet again, goin' through Flint Journal ads.

this ad, '73 Eldorado convertible. Mr. Pouncy enters into negotiations, telephones the owner on several occasions, that would be Mr. Thomas Sandstrom. happen to live in the Fenton area, Mr. Pouncy telephones him, gets directions numerous times on how to get there, they arrive, same thing. Mr. Pouncy and Mr. Sandstrom have negotiations about the vehicle. Yes I like it, first I want to have it checked out by my mechanic at Kings Automotive. There's these terms used, Kings Garage, Kings Automotive. They had to take it there first. Mr. Pouncy gets in the Cadillac with Mr. Sandstrom, he drives it to Kellar Avenue. This time the wife, Ms., Mrs. Sandstrom follows them in their '04 Corvette. As they're getting close to Flint she suspects that something's not right and her suspicions are right. She jots down the license plate number of Mr. Grimes' vehicle, the vehicle that they took out to Fenton to look at the Cadillac. When they get to Kellar Avenue again it's the same set up. They believe that there's gonna be a mechanic to check out this Cadillac. This time Mr. Pouncy's got the gun in the face of Ms. Sandstrom and Mr. Sandstrom taking their Cadillac, their Corvette. took their purse, her purse, his wallet. Lucky for Ms. Sandstrom's intuition, that license plate led the police to track down Mr. Grimes' vehicle, Mr. Grimes arrest led

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to the unfolding of this carjacking conspiracy. Judge is going to address you on the jury instructions, I'd like to touch on some of that because some of this, as I said, Mr. Pouncy directly holds the gun, takes their vehicles, takes their property as it relates to the Sandstroms. As it relates to Mr. Brady, is the owner of the Camaro and the truck and the trailer, he aids and abets in that crime. He offers encouragement, he offers assistance. First, he's the one that got all that goin'. He's the one that entered negotiations to begin with, he's the one that took 'em to the location of the Camaro, he's the one that told 'em we're gonna go have it checked out by my mechanic. One the way there, that's when they had the discussion about well you should do it Mr. Grimes, you should do this carjacking and he does. his assistance, intentionally assisting someone else to commit the crime, that's aiding and abetting. That crime was committed, we know that. Their vehicles and property were taken. He did something to assist, I outlined that for you. He intended that carjacking to occur. Armed robbery, armed robbery is the taking of the people's property. The property would be the cell phones, the purse, the wallet, the keys, that was at gunpoint. was done by Mr. Pouncy or, once again, at his aid or encouragement or assistance. We do have a lot of counts

in this case, 11 counts the Judge read them to you.

I do feel I have to correct one thing in what you're saying there. You said that armed robbery was the taking of property, but it's the taking of property by force or violence and so that is an element that you didn't bring up and I just want to make sure the jurors aren't confused on that because I don't want them to think just by taking property that's armed robbery so-

MR. LAROBARDIERE: That's true Judge. That's true Judge-

THE COURT: all right you may proceed and Mr. Pouncy please put your hands down sir. Just sir, shh, please no comment please. Go right ahead Mr. Larobardiere.

MR. LAROBARDIERE: As I, as I said, and the Judge is right, he did that at gunpoint or aided and assisted his stepbrother, Wayne Grimes, at gunpoint. To do the armed robbery, they produced the gun, they put 'em in fear. That is an element as the Judge said. Then in the course committed a larceny, took their property, their wallet, their purse, their vehicle. And possessing the dangerous weapon, people describe a black and grey 9 millimeter pistol that was used by Mr. Pouncy or Mr. Grimes. That vehicle, or that pistol was even fired by

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Mr. Grimes when Mr. Brady and his friend, Mr. Wendell, didn't want to give up their keys and cell phones so Wasn't movin' fast enough so he fired a shot. Because we have a lot of counts, I have this illustration to kind of put it in perspective with the different pieces of property and the victims so you can be thinking about that as you hear the testimony come in. I'll offer pictures of these various pieces of property also of the vehicles. Carjacking under counts 1, 2, 3 and 10 at the top of this slide is the carjacking of the Corvette. Sandstrom was driving the Corvette as a follow-up vehicle with the Cadillac when they're goin' to the supposed mechanic's house. To the right of that slide is count number 2, that is the Ford truck, that is Mr. Brady's He did have a trailer on that as well that he trailered the '79 Camaro with. Below that slide on the right is the white Cadillac. That is carjacking count number 3, that was driven by Thomas Sandstrom. All the way around clockwise up to about ten o'clock on the left, from the rear view that's the '79 Camaro. Where it says Earl Brady that's count number 10. These are the carjacking counts, those are the vehicles and the people that possessed them. Below that are the armed robbery counts, 4, 5, 6 and 7. Top slide, that is the red Corvette up there, it's not lighted very well but that's

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what that is in that picture. Number 4 is the money and That was the contents of Ms. Sandstrom when she was drivin' that Corvette. That accounts for the armed robbery count of number 4. Next to that to the right going clockwise is count 5, Earl Brady had a cell phone he was made to give up at gunpoint, that this man assisted in giving aid and encouragement, that's count number 5, armed robbery. Below that is the white Cadillac picture again. Number 6 money and wallet that Mr. Sandstrom had on him he was made to give up at gunpoint. That accounts for the armed robbery count 6. Count 7, the cell phone picture, six o'clock frame, Mr. Wendell was made to give up his cell phone. aided and encouraged in that robbery. That's count 7. To the left of that you see a black qun. Counts 8 and 9, this man possessed a gun when he robbed those people of their Cadillac and Corvette and of their wallet and their purse. He also aided and abetted his stepbrother Wayne Grimes by making that gun available so he could complete the robbery. He offered other aid and encouragement and assistance when Mr. Grimes robbed Mr. Brady and Wendell at gunpoint as well. That accounts for counts 8 and 9. Count 11 is felon in possession of a firearm. Count 11 there was a stipulation that this defendant could not possess a gun because he's been convicted of a specified

felony. These are all the counts ladies and gentlemen,
those are the, the testimony that will be preceding here,
starting today with. After you hear that testimony keep
this slide in mind. We're gonna go over it again at the
end but when you hear the testimony and plug it into this
slide, go back, find him guilty of all 11 counts for
taking advantage of these people when they're just tryin'
to sell their vehicle. Thank you.

THE COURT: Thank you Mr. Larobardiere. Do you wish to make an opening statement Mr. Breczinski? And Trisha when you get a chance will you approach?

MR. BRECZINSKI: Can we approach the bench Your Honor?

THE COURT: I already know what you're gonna ask, I think I heard so I, I'm gonna get Trisha to look into it okay?

MR. BRECZINSKI: Okay (inaudible) a record on all this if we're going to.

THE COURT: Maybe you better approach. All right ladies and gentlemen I'm going to ask you to stand for a second please. And Trisha would you take the jurors back to this room here for a minute please and we'll have you come right back out in just a few minutes ladies and gentlemen. Everyone please stand. Mr. Pouncy, Mr. Breczinski. Thank you. Please everyone have

1	a seat. Mr. Breczinski what is it that you want to bring
2	to my attention at this time sir? I'm gonna take this,
3	okay.
4	MR. BRECZINSKI: My, my client just made a
5	statement he wants to make his own opening statement. If
6	he's doing that obviously he'd be taking the stance that
7	he'd have to be representing himself.
8	THE COURT: He wants to make his own opening
9	statement?
10	MR. BRECZINSKI: That's what he just told me.
11	THE COURT: Okay.
12	MR. BRECZINSKI: And I had to-
13	THE COURT: And is, what instruction should I
14	be reading with respect to that? Is there any particular
15	instruction that deals with that issue?
16	MR. BRECZINSKI: I'm not sure if there's one
17	about (inaudible)-
18	THE COURT: I don't think so.
19	MR. BRECZINSKI: representing himself or not.
20	THE COURT: No I don't think so. Um all right
21	then Mr. Pouncy why don't you stand sir. Is it true that
22	you're asking to make your own opening statement?
23	MR. POUNCY: Yes I'm, yes that is true but I
24	would ask that if there are any objections needed that
25	I'm not further, that I'm not known to do is properly

object if my attorney can do it because I, because like I first stated to you earlier I haven't even had a conversation, we seen each other-

THE COURT: Mr. Pouncy one second. Sir if you make-

MR. POUNCY: This my life man.

statement, you'll have to represent yourself through this trial. Now I'm not gonna have him doin' half the trial and you doin' half. Either one, one of you is gonna be the lawyer and the other one isn't. Now if you decide to represent yourself, then he's gonna be sittin' back just as an advisor and that'll be it and you'll be able to get advice from him but you'll be callin' the shots through the entire trial. That includes objections and everything else. And if you don't know when and how to make 'em then I guess, you know, that's, that's on you. Now you say this is your life uh then I would caution you to be very careful as to how you proceed right now-

MR. POUNCY: (Inaudible).

THE COURT: and uh sir, just one second okay 'cause you're, you're talkin', um there's no way if, if I needed to have my transmission rebuilt that I would pull my car into a place to have it rebuilt and say to them look you guys step to the side I'm gonna rebuild this

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transmission because I don't know anything about buildin'
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         transmissions. I've never built one. Are you hearin'
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         what I'm sayin'?
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                   MR. POUNCY: Yes Your Honor-
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                   THE COURT: All right.
                   MR. POUNCY: but you're not hearin' me though.
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         I'm just, all I'm-
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                   THE COURT: I am hearin' you sir. A lot better
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         than you think.
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                   MR. POUNCY: What, okay basically what I'm
         sayin' is he, yes he have came to see me, well to drop
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         papers off you know what I'm sayin' about a dozen times.
         I complained, I complained that I don't, listen, can I-
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                   THE COURT: Yeah I'm listenin'.
                   MR. POUNCY: I complained that I don't feel
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         comfortable when I, I didn't talk to him, no alibi has
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         been formed, no alibi thing has been called for me man
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         just 'cause stuff happen. If they, if they witnesses
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         didn't come they would postpone it. If the prosecution,
         hold on-
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                   THE COURT: No that's not true.
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                   MR. POUNCY: Okay.
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                   THE COURT: They wouldn't be postponin'
         anything. I decide what's postponed and I wouldn't be
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         allow (inaudible).
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MR. POUNCY: Okay. Well anyway I haven't got to talk to him about the cases, about, about the case you know what I'm sayin'? I haven't, 'cause there ain't nobody gonna take care more, no more than yourself you know what I mean? And that's, that's all I'm gonna, got to say man and I want to just give my opening statement. I'm sittin' here gettin', gettin' blamed for somethin' that I didn't do. It's a life you know what I'm sayin'?

THE COURT: Well I'm sorry that you don't like the way that this procedure is set but this is a procedure-

MR. POUNCY: You know what I'm sayin' it's not that. It's just that he, he don't know no more than what's, 'cause we didn't talk. He don't know no more than what he done read 'cause we didn't talk. I didn't (inaudible) on my situation just like the prosecutor don't know more than what he done read or what they done told him. (Inaudible).

THE COURT: Is that all that you want to say?

Is that it? Do you wish to represent yourself sir or are you gonna let Mr. Breczinski represent you? And ma'am I can't hear from you. I know you're his mom, I understand that but I, I can't hear from you. So Mr. Pouncy, I'm sorry, so which is it gonna be sir?

MR. POUNCY: So it's not an option for me to be

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able to get, even though I complained earlier and don't 1 feel comfortable with the representation, for me to get 3 further (inaudible)? THE COURT: No sir if you want to, if you want 4 to decide who's gonna represent you then you get your 5 money together and you go hire the lawyer you want to 6 7 represent you. Otherwise, you're gonna get the lawyer that we appoint for you to represent you. 8 9 MR. POUNCY: Well yeah I'm gonna hire a lawyer then. 10 THE COURT: Well I'm sorry sir it's late for 11 12 that. It's trial day today. MR. POUNCY: It's too late? 13 THE COURT: Yes sir. If you were gonna hire 14 somebody-15 16 MR. POUNCY: (Inaudible). 17 THE COURT: if you were gonna hire somebody you should have did it a long time ago. This is trial day 18 today. 19 20 MR. POUNCY: Okay excuse me. THE COURT: The only issue now is is are you 21 22 gonna let Mr. Breczinski represent you or are you gonna 23 represent yourself, that's the only thing that's on the table right now. 24 25 MR. POUNCY: Well let me ask you this. Would

you let somebody represent you that didn't come and see you the day before your trial that didn't come and talk to you, that you didn't discuss your case with?

THE COURT: Sir I would let Mr. Breczinski represent me in a heartbeat before I would represent myself with the knowledge that you have.

MR. POUNCY: So will I, I won't be able to talk at all if he talk? I won't be able to say nothin' at all?

THE COURT: No sir. He is gonna represent you. That's what he does. You may get a chance-

MR. POUNCY: He don't listen man he wave me off and all that-

that's what you say and he may be, maybe he ought to be waving you off depending on what it is you're sayin' and what you're doin'. I don't know what you're sayin' or doin' but when I practiced law it was irritating to have a defendant sittin' beside me runnin' his mouth while I'm tryin' to listen to everything else that's goin' on in here and make sure that his rights are bein' protected.

MR. POUNCY: How about when you, you know defended one on one and you, and it still goes on. You (inaudible)-

THE COURT: Mr. Pouncy I, I'm, sir stop. I'm

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at the end of this conversation 'cause I see where this is goin'.

MR. POUNCY: (Inaudible) please Judge Hayman.

THE COURT: Sir I am not gonna sit here and argue with you. Have a seat please. And Mr. Breczinski it looks like you'll be making the opening statement and representing Mr. Pouncy-

MR. POUNCY: (Inaudible).

THE COURT: all right? All right now so why don't you come back over and Trish get the jury and let's get started up. I'm not gonna let you highjack this case Mr. Pouncy and either you're gonna shut up or I'm gonna have you hauled back upstairs and you'll be sittin' up there watchin' it from upstairs or not watchin' it at all and we're gonna continue to conduct this trial. Or I'm gonna have them tie you up and put a gag on your mouth and have you sit here gagged if you don't shut up okay? All right get the jury Trisha.

MR. BRECZINSKI: Your Honor?

THE COURT: Yes?

MR. BRECZINSKI: I was wondering if we could get some water out here. I get parched and you used to have pitcher in this courtroom-

THE COURT: I know but we, we're concerned about havin' water. I may, I don't have a problem with

you gettin' a cup of water but right now I want to get the jury in here okay?

MR. BRECZINSKI: The reason I ask is because when I was a teenager most of salivary glands were removed and I (inaudible).

THE COURT: You can get a cup of water I don't have a problem with that.

MR. BRECZINSKI: Okay.

THE COURT: Yeah you can do that. In fact

Trish will take care of that for you. Mr. Pouncy be

quiet okay? One more time and I'm gonna haul you

upstairs. I kid you not. All right get the jury Trish.

Everyone stand please.

(At 3:01 p.m., Jury enters courtroom)

THE COURT: Please have a seat ladies and gentlemen. And we are back on the record and Mr. Breczinski would you begin with your opening statement sir?

MR. BRECZINSKI: There is no doubt these cars were carjacked and some armed robbery happened. We're not gonna say that this is all a lie, that these things never happened or anything else of the sort. There's no doubt that these, the Sandstroms or the um, had their um Cadillac and their Corvette taken from them. There's no doubt that these, these other uh, Camaro was taken from

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Earl Brady and this truck also. There's no doubt about that, that these things were taken. The issue is whether or not Omar Pouncy did it. Issue is whether he was the person that did it. We've got basically five people that are sayin' I think that's the guy, four of which never him before in their life, four of which are four white people that are sayin' that hey this is the guy that did it, we think it is. They really hadn't met him much. There wasn't repeated times coming there. There wasn't all sorts of things, it was a relatively short thing and the other person we have it saying is this stepbrother Wayne Grimes. And you think well Wayne knows who this is and why would he be mistaken about this but unfortunately, Wayne Grimes and Omar had a little bit of a history. Wayne had a girlfriend and Omar, to put it delicately, became intimate with Wayne's girlfriend and there is a little bit of bad blood because of that between them. And he says hey he's got a reason to say this and he's got a, a good friend, a (Inaudible) Tanner who looks a lot like me. I've, and that was his best friend, I bet you that that's the person. He's saying I wasn't there, that's what Omar's saying, it wasn't me, these people are mistaken. That in a nutshell is what is going on. There is, we're gonna hear basically identification. We don't have fingerprints, we don't

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have DNA, we don't have videotape, we don't have all these wonderful things we can play there. It's people saying I think that's the person and well you're gonna end up having to decide whether there's reasonable doubt or not as to whether Omar was the person that did it or whether or not they could be mistaken. And if there's a reasonable doubt as to it we'd be, we'll be asking you to come back with a verdict of not guilty. Thank you.

THE COURT: Thank you Mr. Breczinski. Mr. Larobardiere are you ready to call your first witness? MR. LAROBARDIERE: Yes Judge.

THE COURT: You may call your first witness.

MR. LAROBARDIERE: Thank you. We would call Joseph Dale, Davis.

THE COURT: And Mr. Larobardiere can you just kind of slide that podium just slightly a little bit over this way so that when people come through-

MR. LAROBARDIERE: This way Judge?

THE COURT: yes, slide it slightly to your right as you're facin', yep, slightly over. 'Cause it, when people come through I want 'em to be able to come through there to here. Thank you. Good afternoon sir if you'll come up this way please? If you'll raise your right hand. Solemnly swear or affirm the testimony you give today will be the truth so help you God?

(ija

1		MR. DAVIS: I do.
2		THE COURT: Please pull that door towards you
3		sir and you may step up and have a seat. Mr.
4		Larobardiere when you're ready you may proceed.
5		MR. LAROBARDIERE: Thank you Judge.
6		JOSEPH SCOTT DAVIS
7		called as a witness at 3:06 p.m., testified as follows:
8		DIRECT EXAMINATION
9	BY M	R. LAROBARDIERE:
10	Q	Morning, afternoon Mr. Davis. Could you please state
11	your	name and spell it for the record?
12	A	Joseph Scott Davis, J-o-s-e-p-h S-c-o-t-t D-a-v-i-s.
13	Q	Thank you. What's your, your, you have a business-
14	A	Yes sir.
15	Q	self-employed business is that right?
16	A	Yes sir.
17	Q	And what's the name of the business?
18	A	Mr. Davis Racing.
19	Q	Where's it located?
20	A	Richfield Road, 3614 Richfield Road.
21	Q	City of Flint or-?
22	A	Yes sir.
23	Q	Okay. Uh you do work on vehicles there?
24	Α	Yes.
25	Q	What type of work?

- 1 A Uh mostly race car chassis fabrication.
- 2 | O Fabrication means metal work?
- 3 A Yes.
- 4 Q Okay. Do you recognize this vehicle on the screen?
- 5 A Yes.
- 6 Q Okay. Do you recognize this vehicle on the screen?
- 7 A Yes I do.
- 8 MR. LAROBARDIERE: It's been marked as People's
- proposed exhibit number 1. Judge for the record I've
- 10 shown defense counsel this and uh, uh the uh subsequent
- exhibits, all my exhibits.
- 12 (At 3:07 p.m., PX 1 introduced)
- 13 BY MR. LAROBARDIERE:
- 14 | Q Does this, how do you recognize this vehicle?
- 15 A It belongs to Ed Brady.
- 16 | Q And how do you know Mr. Brady?
- 17 | A He's a drag racer. We associate on uh, on uh different
- 18 race cars.
- 19 Q Okay. Has he brought work or vehicles-
- 20 A Yes he-
- 21 | Q for, for-
- 22 A yes, yes.
- 23 Q work at your shop?
- 24 A Yes he does.
- 25 Q All right. This picture ad, does this belong to Mr.

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Brady did you say?
1
         Yes that was his car.
2
    Α
         Does this ad accurately, this picture accurately
3
4
         represent that Camaro owned by Mr. Brady?
5
         Absolutely.
    Α
                   MR. LAROBARDIERE: Judge I ask that People's
6
7
         number 1 be admitted.
                   THE COURT: Any objection to number 1 Mr.
8
         Breczinski?
9
10
                   MR. BRECZINSKI: No Your Honor.
                   THE COURT: 1 is in.
11
12
                     (At 3:08 p.m., PX 1 admitted).
    BY MR. LAROBARDIERE:
13
14
         Tell us about your first contact with this car in the
         month of October 2005.
15
         Ed brought it up to me. I was working on another one of
16
         his vehicles. He asked if I could set it out front and,
17
         and try to sell it. I have an open parking lot you know
18
         pretty good visi-
19
         You're on Richfield, I'm sorry to interrupt-
20
         yeah pretty good visibility.
21
22
         You have pretty, pretty good traffic flow through there?
23
              Yes, yes absolutely. And I would pull it out in the
         mornings and put it in every night. I have 4000 square
24
         feet, you know my facility, and then I could pull it in
25
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1
              (Judge Archie L. Hayman; 01-24-06; 3:08 p.m.)
 2
         at night.
 3
         All right. Tell us about this vehicle, looks, looks like
         it's pretty fast.
4
         Roll cage, real nice rear end, suspension's excellent in
 5
    Α
         it, it had probably a 700 horse motor in it, nitrous
 6
7
         oxide, all kinds of goodies. It really isn't a street
         car, it's a drag car and uh-
 8
         Sounds-
9
    Q
         and it was basically used as that, as a drag car.
10
         Drag car?
11
         Um hm.
12
    Α
         Sounds like it's worth some money-
13
         Yes.
14
    Α
         the parts on it.
15
         Absolutely.
16
    Α
17
         Okay. Did you advertise this vehicle, did you have any
    takers?
18
19
         I had a dozen people stop over the, over the course of
20
         the three weeks there probably fifteen different
21
         customers.
         All right. Sep, September 29<sup>th</sup> in that time frame, you
22
    Q
23
         have anybody stop by seriously lookin' at it?
         Yes I did.
24
    Α
25
         Do you see that person here today?
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- 1 A Yes I do.
- 2 Q Point to where you see him and describe the clothing the
- person's wearing please.
- 4 A On that day?
- 5 Q Yes. Well the person-
- 6 A Or now?
- 7 | Q the person you recognize as being serious.
- 8 A This fella right here with the white shirt on.
- 9 Q Okay and when did you, I, I referred you to September 29th
- 10 but when did you first have contact with this gentleman?
- 11 | A I'm not really, exactly sure on the dates. I have a lot
- of traffic, it is a business, but probably four days or
- 13 five days before the actual incident him and two other
- 14 fellas stopped by and looked at the car, seemed terribly
- interested. You know the kind of deal where you almost
- 16 know you're gonna make a sale you know?
- 17 | Q Were you negotiatin' price or would you refer to Brady?
- 18 A I was, that's, that's not my business. I, I gave 'em a
- 19 | flat price. I, it's not my business to deal with somebody. I
- 20 | don't sell cars. I was basically doin' it as a favor for Ed.
- 21 | I don't, I don't have a license or do business as a car
- 22 | salesman. And it takes too much of my time honestly, it's
- 23 | outside you know?
- 24 | Q True. You'd rather be in the shop-
- 25 A Absolutely.

19

- fabricating. 1 0 Α Yep. 2 Say about four, five days prior to September 29th this 3 gentleman came by? 4 5 Yes. Okay. Do you remember how he got there? 6 7 The first it was a car. A little silver Chrysler. Α All right um you say he was with other people. Between 8 this gentleman and Judge I will ask that the record 9 10 reflect witness has identified Mr. Pouncy. THE COURT: Absent objection the record shall 11 reflect the identification of Mr. Pouncy. 12 BY MR. LAROBARDIERE: 13 If Mr. Pouncy was there with two other gentlemen, out of 14
- 15 Mr. Pouncy and the two other gentlemen, who was doing all the talking of interest in the Camaro with you? 16
- This gentleman here. 17
  - All right. Is there a point where they, it got so serious where you called Mr. Brady?
- They came back a second time. I believe on the second 20 time the, the two other fellas were different and then 21 the subsequent third time when they finally bought the 22 23 car or were making the attempt to purchase on the car, 24 they were you know two other fellas than the first time.
- The first time I didn't see the other two guys after 25

25

- that. 1 2 Okay. How many face-to-face encounters did you have with Mr. Pouncy about this vehicle? 3 Three. Α 4 Three times? 5 Three times. 7 How close in distance would you get to Mr. Pouncy during 8 these three occasions? 9 Α Probably less than two feet. Less than two feet? 10 Yeah we were under the hood, lookin' at the car, you know 11 inspecting everything. 12 Did you ever, did he ever tell you his name? 13 Q Yes. 14 What name did he give you? 15 16 Α Jacob. Okay and at some point negotiations get so serous you 17 18 call Mr. Brady? 19 On the third, on the third visit. He had called me Α earlier in the day askin' me about insurance, you know 20 how should he insure the car because it's a race car, you 21 know basically told me he was comin' with the money and 22 ready to do business. So I called Ed on the phone and 23
  - this guy's gonna be here and pretty much they showed up

said you need to get up here. You know an hour from now

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- and Ed showed up and it was over within a few minutes. 1
- They were down the road. 2
- Okay well how did you communicate with Mr. Pouncy about 3 Q
- the vehicle, other than in person? Was there any other 4
- 5 ways?
- 6 Α On the phone. He called me one time on the phone.
- 7 Actually I think he called me two times on the phone.
- All right. About the vehicle? 8
- 9 Α About the vehicle both times.
- 10 And that caused you to cause, call Mr. Brady?
- Α Yes. 11
- And Mr. Brady came up with someone else? 12
- Α His friend Pat, yes. 13
- Okay and what were they drivin' when they came up to your 14
- 15 shop?
- Α Ed's Ford pick-up. 16
- Okay did they have anything with them other than the 17
- pick-up? 18
- 19 A Had the trailer that they would have to call the, haul
- 20 the car on.
- Okay. The vehicle was not, you couldn't drive it down 21
- 22 the street at all?
- Well it wasn't insured for that type of drivin'. 23 Α
- 24 you know more of a storage insurance and basically you
- 25 just don't drive that kind of car around you know.

Is it real loud to drive? 1 0 Not real you know overly loud but it's, it's, it's for 3 drag racing. It doesn't drive real well other than going 4 straight you know and it would've been a, a real handful. 5 All right. Ed Brady shows up with his truck and trailer 6 Q 7 and what happens from there? They discuss it a little bit, actually talk about price-8 9 Let me, let me interrupt you. When you, you say they, who's talkin' to who? 10 11 Α Ed, Ed, Pat, uh-12 This man here? Yes that I now know-Α 13 14 Mr. Pouncy? 15 as Omar, they discussed price and I don't think Ed really 16 budged on the price whatsoever, I think they were pretty Then the question came up yeah I'm really 17 firm there. happy with the deal, I want to buy the car. Can you take 18 19 it over to my mechanic at King Automotive. What was the name of the mechanic? 20 Q 21 I, I don't know the mechanic's name, the, the shop is 22 King Automotive. 23 Q King Automotive? 24 A. Yeah.

What happened at that point?

- Ed kind of went with it and said yeah okay. 1 somewhat comfortable. Did a fabulous job of convincing 2 me that he was gonna purchase this car. I was-3 4 Q Now when you say that you're referring to Mr. Pouncy? Α Yes. Absolutely. 5 All right. You dealt with people interested in vehicles 7 before? Absolutely. I'm, you know I'm kind of in the business I 8 have to sell my jobs when I'm done and I have to sell the 9 job to 'em when it, you know so I'm a, I'm a people 10 person in that respect. 11 All right so there's no doubt in your mind that this is-12 This was a done deal you know it was, it was sold. 13 did a fabulous job of selling himself. 14 All right. So they agreed on price sounds like, they 15 Q agreed to, take it to the automotive? 16 Um hm. 17 Α And what happened now? 18 19 They loaded the car up and twenty-five minutes later I got a phone call from Ed sayin' that he didn't have his 20 car anymore. 21 22 Q You say you had three face-to-face encounters within a 23 couple feet with Mr. Pouncy.
- 24 A Yes.
- 25 Q Any question as you sit here today that it was Mr. Pouncy

each time you saw him in person?

Α None whatsoever.

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MR. LAROBARDIERE: Nothing further Judge.

THE COURT: Cross-examination Mr. Breczinski.

MR. BRECZINSKI: Can we approach Your Honor?

Everyone please stand THE COURT: Sure. And please follow Trisha back to the jury room again please.

(At 3:17 p.m., Jury excused)

THE COURT: Please everyone have a seat and we're on the record Mr. Breczinski. What is it that you want to say to me at this time?

MR. BRECZINSKI: During the direct examination of what is the first witness of this matter, Mr. Scott Davis, my client wrote a note which he passed me that says, and I quote, "I'm gonna represent myself from now on so you can tell the Judge" and he apparently does desire that he definitely wishes to represent himself.

THE COURT: Okay Mr. Pouncy would you stand Is that your desire at this time? Please remain sir? standing sir. Mr. Pouncy you understand you have the right to an attorney and you have the right to Court appointed counsel if you can't afford one, do you understand that?

> MR. POUNCY: I don't have attorney right now.

25

1	THE COURT: Sir I'm just asking you do you
2	understand your rights sir?
3	MR. POUNCY: Oh yes I do understand.
4	THE COURT: You understand that if you
5	represent yourself that I will have to treat you like any
6	other lawyer and if you don't comply with the Court rules
7	I'm gonna have to call you on it you understand that?
8	MR. POUNCY: Yes sir.
9	THE COURT: And you understand that Mr.
10	Breczinski will be here just simply to advise you from
11	this trial forth and if you stand up and start.
12	representing yourself you're not gonna be able to change
13	horses in the middle of the stream. You're gonna be
14	representing yourself from beginning to end sir. Is that
15	what you really want to do?
16	MR. POUNCY: Yes. Yes.
17	THE COURT: Mr. Pouncy I'm gonna tell you that
18	in my opinion you have no business representing yourself,
19	none whatsoever.
20	MR. POUNCY: The fact that they found the
21	(inaudible) shoe-
22	THE COURT: Sir I just, sir I just want you to
23	understand that uh-
24	MR. POUNCY: All right I'm ready to go then.
25	THE COURT: All right then Mr. Breczinski have

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a seat and Mr. Pouncy have a seat sir.

MR. POUNCY: (Inaudible).

THE COURT: Yes sir. And everyone stand.

Trish bring the jury back in.

(At 3:20 p.m., Jury enters room)

THE COURT: Everyone stand yes. Ladies and gentlemen please have a seat. We're on the record. Ladies and gentlemen at this time I have to advise you that Mr. Pouncy has decided to represent himself in this trial and I want you to understand that if, since he's decided to represent himself, that this Court has an obligation to hold him to the same standard as I would any other lawyer and so if for some reason I have to make rulings, I don't want you to think that my rulings are any indication of my opinion about this case. My rulings are gonna be simply based on what the law requires me to do and in no way, shape or form reflects my opinion about this case and I just want you to understand that. With that Mr. Pouncy do you wish to cross-examine the witness sir?

MR. POUNCY: Yes.

THE COURT: Then step to the podium and begin.

CROSS-EXAMINATION

24 BY MR. POUNCY:

Q Um you said, can you state your name again please for me

- 1 'cause I didn't catch it.
- 2 A Joseph Scott Davis.
- 3 | Q Joseph Scott Davis. Did you ever, after this incident
- 4 occurred, did you ever speak with a officer or anything,
- or a detective or anyone that come and questioned you
- about the situation, your awareness of it?
- 7 A Yes the, the very next day.
- 8 | Q The very next day? Which, what date, what was, date was
- 9 that please?
- 10 A I'm not real sure on the date.
- 11 | Q You can't remember that?
- 12 A No I cannot.
- 13 Q Okay. Do you know-
- 14 | A Somewhere, somewhere in September, the end of the month.
- 15 Q The end of the month?
- 16 A Yes.
- 17 | Q Okay. Were you shown any, asked to identify the suspect
- 18 or the subject that-
- 19 A Yes I was.
- 20 | Q Okay do you um remember, how did you identify this
- 21 person?
- 22 A They showed me a sheet with six, twelve I think or more
- 23 pictures-
- 24 Q Okay.
- 25 A and I, I was able to pick you out and also another

1		gentleman.
2	Q	Okay do you remember what the name you told this person
3		that you, that, that you knew this person of?
4	A	Jacob Woods.
5	Q	Jacob Woods?
6	A	Yes.
7	Q	Where did you say you knew this subject from?
8	A	Because I was told that he was another associate of
9		mine's, little brother.
10	Q	Okay did you recall, 'cause I have it right here in the
11		police report, that you stated you knew this person from,
12		you alls a part of the same racin' circuit, Jacob Wood or
13		Sam, Sammy Wood or whoever-
14	A	Yeah.
15	Q	this person is. You remember that?
16	A	Yeah.
17	Q	So you, so you knew this person then right?
18	Α	Excuse me for a second.
19		THE WITNESS: Can I answer him like, I, I'm
20		tryin' to come up with a way of answering these
21		questions.
22		THE COURT: Just answer it. Give him your
23		answer.
24		THE WITNESS: All right. You, you came to me
25		as Jacob Woods and you said to me hi I'm Jacob, you

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remember me, Sammy's little brother?
1
    BY MR. POUNCY:
2
         Okay-
3
    Q
         Now that's, that's what you told me and from that point
4
5
         on because I know Sam, I felt comfortable dealing with
         you.
6
         Okay so a person that looks like me, 'cause you know in
7
         this world, do you know in this world there's more than a
8
9
         person, there's more than one person that look like that-
10
    Α
         Not, not in this neighborhood, I'm sorry. I know, I know
         who I'm speaking with right now.
11
12
         Okay. Okay.
                      May I, may I approach the witness please?
                                Yes you may sir.
13
                    THE COURT:
14
    BY MR. POUNCY:
         Um it state that you picked out number, the number 3 on
15
         the, on the photo line-up-
16
         (Inaudible) number 3 but-
17
    Α
         that's what it (inaudible) -
18.
    Q
19
                   THE COURT: And before you show that to him Mr.
20
         Pouncy, make sure Mr. Larobardiere sees what you're
         showing-
21
22
                   MR. POUNCY:
                                 Okay.
23
                   THE COURT: to make sure that it's, he
         understands what it is you're showin' this witness.
24
25
                   MR. POUNCY: Photo line-up that was presented,
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that was produced on the 13<sup>th</sup>, October, October 13<sup>th</sup>.
 1
                    THE COURT: Go right ahead Mr. Pouncy.
 2
    BY MR. POUNCY:
 3
         Okay. Sorry about this. I'm not Johnny Cochran or
 4
         nothin', I'm just representin' myself. Sorry for any
 5
 6
         delays.
 7
                    THE COURT: You don't have to say that sir.
         You decided to represent yourself. Go right ahead.
 8
    BY MR. POUNCY:
 9
         Um this what the um, this what the police report states.
10
         It says note that earlier in the, in the day I had made
11
         contact with Joe Davis-
12
                    MR. LAROBARDIERE: Object Judge to reading the
13
14
         report.
15
                    THE COURT: I would sustain the objection.
16
         You're not allowed to read the police report Mr. Pouncy.
                    MR. POUNCY: Okay I'm sorry.
17
                    THE COURT: You can question this witness but
18
19
         you can't read the report sir.
    BY MR. POUNCY:
20
21
         So you did, okay, did you, it states that you um-
22
                    THE COURT: Mr. Pouncy you're not allowed to
         read that.
23
24
                    MR. POUNCY: Okay.
25
    BY MR. POUNCY:
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Did you pick out, do you remember, recall this picture
1
         that you picked out of the, out of the line-up?
2
         Not out of the page, no I do not.
3
    Α
         Not out of the page?
4
         I, I, if uh, it seems that it was the top right corner
5
         but I'm not a hundred percent sure.
6
7
         I have, I'll show you. I have this picture of the top
         right corner of the line-up.
8
9
                   THE COURT: And just so you know witness, don't
10
         let the jurors see that if you would please 'cause that
         hasn't been admitted.
11
12
                   THE WITNESS: I actually, it wasn't the right
    corner obviously.
13
14
    BY MR. POUNCY:
         Which one was it please?
15
    Α
         This one here.
16
         Which one?
17
         This one here.
18
    Α
19
         Which one, can you state the number?
         Four.
20
    Α
21
         Number four? Okay. May the record reflect that number
22
         four-
23
                   MR. LAROBARDIERE: Judge I would object to his
24
         improper form of question.
25
                   THE COURT: What's your legal objection Mr.
```

1	Larobardiere?
2	MR. LAROBARDIERE: To the form of the question.
3	He was asking the record to reflect something about the,
4	the piece of paper. It, it was not a proper question.
5	THE COURT: And your response to that Mr.
6	Pouncy?
7	MR. POUNCY: This was um, um it was stated that
8	um on the 13 <sup>th</sup> of October that it was-
9	THE COURT: I'd like for you to respond to his
10	legal objection. It's as to the form of the question.
11	At this point-
12	MR. POUNCY: I don't know what none of that
13	stuff means. I don't know. I, I, I don't, I don't agree
14	with him.
15	THE COURT: One second Mr. Pouncy. I have to
16	hold you to the same standard if you decide to represent
17	yourself. I can't really listen to that. I'm gonna, at
18	this point I'm gonna overrule his objection. I'm gonna
19	allow you to proceed.

MR. POUNCY: Thank you I appreciate that. May the record reflect that he picked out number 4 or whatever and number 4 um-

THE COURT: Okay just one second. The record shall reflect that he picked out number 4. Now you're gonna have to question this witness. You can't testify

right now 'cause you're not on the witness stand.

MR. POUNCY: Okay.

THE COURT: And when you're getting ready to say somethin' else that would be testimony. You can't do that okay? You can question this witness. That's what we're doin' right now. Question this witness okay?

MR. POUNCY: Okay um is it all right if I show him this Mr. Larobardiere? This the paper that refers to that line-up, to that line-up?

MR. LAROBARDIERE: Judge I have to object to the admission on the uh, the names. I think it's hearsay as to the names contained on the list.

THE COURT: I'll have to sustain the objection as to hearsay Mr. Pouncy because there has to be a proper foundation laid for the admission of that document. So I have to sustain his objection at this point.

MR. POUNCY: Okay these records are come, cameTHE COURT: You can't say that sir. Right now
the only thing you can do is question this witness and
that's it. You can't make statements, you can't talk to
me or to people around here unless you're raisin' an
objection. You have to question this witness and that's
it.

MR. POUNCY: Okay I object that, I object what he did, what he said.

```
THE COURT: Okay well that's not a, that's not
 1
         appropriate. Right now just ask this witness what
 2
         questions you want to ask him please sir.
 3
                   MR. POUNCY: All right.
 5
                   THE COURT: And you can't, go right ahead, go
         right ahead sir.
 6
    BY MR. POUNCY:
 7
         Number 4, you picked out number 4. Can you state the
 8
         name of the person, number 4 these, okay say for instance
 9
10
         number 1-
                   MR. LAROBARDIERE: (Inaudible).
11
                   THE COURT: I would have to sustain his
12
         objection to that Mr. Pouncy. You can't ask that
13
14
         question.
15
                   MR. POUNCY: I can't ask that question?
                   THE COURT: No sir.
16
17
                   MR. POUNCY: May I present this picture please
         Your Honor? I mean Mr. Larobardiere.
18
19
                   MR. LAROBARDIERE: I have to object to
         relevance Judge.
20
21
                   THE COURT: Well I'm not sure what the picture
22
         is but uh-
23
                   MR. POUNCY: It's the same picture I showed,
         presented earlier.
24
                   THE COURT: Did you want to ask this witness a
25
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question about the picture?
1
                   MR. POUNCY: Yes that's-
                   THE COURT: Go right ahead. You can ask him a
3
         question about the picture.
4
    BY MR. POUNCY:
5
         Excuse me your name again sir?
6
7
         Joseph Scott.
         Joseph Scott?
8
         Yes.
9
    Α
         Mr. Scott um does this person look familiar to you bein'
10
11
         the person that did all the talkin' and all that stuff?
12
    Α
         I don't, I don't remember that fact.
         Okay. How, how positive, oh so you picked out number 4
13
         right?
14
         You know that, that picture, maybe I made a, a hasty
15
16
         judgment. That's a pretty unclear picture.
17
         So you think you made a mistake? (Inaudible).
18
         I may have made a mistake there.
19
         Think this was, you made a mistake, mistaken
20
         identification?
         Well I didn't make a mistake. I, I had a color photo the
21
22
         first time.
23
                   MR. POUNCY: Can I see the color photo please?
24
         The color photo right there is right under there.
25
         this one, no that's not the one, no that's (inaudible)
```

```
the one that I presented to you. Your Honor I believe I
1
         have a color photo, color photo. I'm sorry about that,
2
         just a second please.
3
                   THE COURT: Yes go right ahead sir?
4
                   MR. POUNCY: You have color photos in here?
5
                   MR. BRECZINSKI: (Inaudible).
6
7
                   THE COURT: Do you have a color, colored photo,
         photo of the one he's asking for Mr. Larobardiere?
8
9
                   MR. LAROBARDIERE: I don't know Judge. I don't
         know which one he's-
10
                   MR. POUNCY: It's this line-up right here.
11
12
         That's it right there. That's the one identified.
                                                              There
         go a color photo right there. Can I see it please?
13
         Thank you.
14
15
                   MR. LAROBARDIERE:
                                      Judge I'm gonna object.
16
         He's shown numerous photo arrays which I think are
17
         confusing the witness.
                   THE COURT: Well I'm gonna allow him to
18
19
         question the witness. It's his cross-examination.
20
         Proceed Mr. Pouncy.
21
    BY MR. POUNCY:
22
         Okay there go the color photo, it's better, sorry about
23
         that. But is that-
24
         You're not in this photo.
25
         Is that (inaudible) pictures?
```

You're not in this group of photos. 1 Α Well why did you say number 4-In that other picture it, it kind of looked like you but 3 it was a terrible picture. It was black and white, had 4 been copied many times. 5 Oh so you can, all right so it is possible for you to 6 7 mistaken identify someone is that a, is that correct? Yes. 8 Α Because we are human right? 9 Yes absolutely but if the, if the pictures were clear it 10 Α was pretty easy to judge. 11 Okay well yeah that, yeah that, that number 4, I want to 12 Q reflect to number 4, that number 4 picture that you 13 picked out. It wasn't me, it, that wasn't a photo of me. 14 THE COURT: You don't have to testify about 15 that, you can't testify right now Mr. Pouncy. 16 MR. POUNCY: Oh I'm, I'm not tryin' to testify. 17 Can I make the record reflect to the, can I speak to the 18 jury? I can talk to the jury too right? 19 THE COURT: Not, not really. 20 MR. POUNCY: Not, not at this time? 21 22 THE COURT: No. Only thing you can do right now, and I'm gonna make it clear again, the only thing you can do right now is question this witness and that's 24 it. 25

```
BY MR. POUNCY:
1
         So is it a poss, is it a possibility that you could
2
3
         mistaken identify anyone, not just singlin' out, not just
         singlin' out the person that you seen, that you thought
4
         you seen that day is anyone, have you ever seen someone
5
         that look alike to you before?
6
         Absolutely. We all have.
7
                   MR. POUNCY: All right thank you I um, I have
8
9
         no further questions, oh so you don't remember the dates
         that this stuff happened?
10
11
                   THE WITNESS: Not exactly. Somewhere near the
12
    end of the month in September.
    BY MR. POUNCY:
13
         Okay so-
14
         I do, I do an awful lot of business and when I was there
15
16
         I, I can't remember exact dates on things.
         'Cause it states, well, um, 'cause um, is, when you, when
17
18
         you um talked, gave your statement to the detective was
         it, could you um state the detective's name who you
19
         talked to or officer that you talked to that day that you
20
         gave a statement to please?
21
         This officer right here.
22
         It was, it was the detective?
23
         Detective right here.
24
    Α
25
         All right just a second please. 'Cause I, I'm not sure
```

```
1
         if that was the officer that was in charge of this case
2
         and the one that-
3
                   THE COURT: You have to ask just questions Mr.
                  That's all you can do is ask a question sir.
4
5
    BY MR. POUNCY:
         Are you positive that this was, that this was the
6
         officer?
7
8
         He's the, he's the only detective that I've spoken to
    Α
9
         about this case from beginning to end.
         From the beginning to the end?
10
         Until now.
11
12
         That drove over and showed you the photos-
         Yes.
13
    Α
         of the person that you stated name is Jacob Woods?
14
15
    Α
         Yes.
         And his brother Sam Woods?
16
         You said he was your brother.
17
         The person that you seen, the Jacob Woods character, you
18
         stated that Sam Woods was his brother?
19
20
         No I don't, I don't know him to be his brother. You told
    Α
21
         me your were Jacob Woods and you were Sam Woods' brother.
22
         Um but you state, is, is-
         To be perfectly honest with you-
23
    Α
         excuse me, so it's not, so it's not true that you said
24
25
         you know this person you know, when you know someone it's
```

- not that you heard or hearsay right? Right or wrong? 1 Absolutely. 2 Α All right. You stated, so didn't state that you know 3 this person from the racin', the racin' circuit 'cause 4 5 that's what my, from my research that's what I, that's what I discovered. That you said you known this person 6 and you known this person who came, this character that 7 came and seen you as Jacob Woods and his brother from a 8 racin' circuit. 9 I, I do, I have seen you two other occasions when Sammy 10 Α was there when the other people that, that we commonly 11 12 know were there. 13 Q So you-And I was introduced to you then I would think four 14 months or five months earlier, actually then as Sammy's 15 brother. 16 As Jacob Woods. So why would a person go around four 17 Q months before this-18 I don't know. Maybe-19 can you hold on a second please? Hold on a second. 20 would a person go four months before this, this um 21
- would a person go four months before this, this um

  alleged carjacking and armed robbery which is, which is a

  total disgrace, which I'm total against, would, would

  never do but why would a person go and tell you four

  months before they even find out that you fix car, well

that, that this car's for sale, present you his name as 1 bein' Jacob Woods? Are you asking me a question? 3 Α 4 Why would a person-Q Yes. 5 The answer, the answer to that question is sometimes Α people that commit crimes use aliases. 7 Use aliases? So, so you, so, so you not, so are you 8 positive, 'cause first, hold on let me retract. So first 9 you said that the number 4, the number 4 character-No, no, no, no. We, we've gone past that. 10 11 Hold on can you not interrupt me please? I, I'm tryin' 12 to listen to you and be respectful sir. First you stated that the number 4 character in the line-up-13 I said he-14 Α 15 hold, hold on. First-16 I said he looked like you. Okay oh so-17 I said he looked like you. 18 it is people who look like-19 20 I said, I said he looked like you. Α more than one person who looks like me? It is, so you do 21 22 agree with that then right? You do agree that there's 23 more than one person that looks like me? But without a shadow of a doubt, as soon as I saw those 24

pictures in color, you were not one of the people on that

```
(Judge Archie L. Hayman; 01-24-06; 3:37 p.m.)
1
2
         page.
         But black and white, all that, colors and all that,
3
    0
         colors, the color, the color of the picture it doesn't
4
5
         matter you know 'cause we don't know, 'cause honestly, no
         one's in this courtroom-
6
7
                   THE COURT: Mr. Pouncy you're not allowed to
         testify.
8
9
                   MR. POUNCY: I'm not testifying.
10
                   THE COURT: Yes you are sir. You-
                   MR. POUNCY: All right-
11
                   THE COURT: have to ask, please one second, you
12
         have to ask a question of the witness.
13
                   MR. POUNCY: Ask a question. All right I'm
14
15
         sorry man, I'm sorry man. It's my life man so I'm tryin'
16
         to-
    BY MR. POUNCY:
17
         Okay so, so you said, so you said, first you say, it
18
         states from my discovery that you said it was a number
19
20
         that it, it reflects if the, it reflects in the police
21
         report that you said you, you, it states that you picked
         out a number 3 character out the line up, out the photo
22
23
         line-up.
24
         I don't have that, I don't have that group of pictures in
25
         front of me right now so I'm not sure.
```

- 1 Q But didn't, but this is, but didn't this, did you do
- that? Did you pick out the number 3 character?
- 3 A I, listen I, I work for a living-
- 4 Q Me too.
- 5 A and, and, and honestly, honestly I can't remember what
- 6 number I picked out of a line-up but if I had the paper
- in front of me again with your picture on it or Jacob's
- 8 picture on it I'd, I'd hit it first shot.
- 9 Q Thank you. Thank you so if this-
- 10 A (Inaudible).
- 11 Q character Jacob, if this character Jacob was in the photo
- 12 line-up, you can identify him?
- 13 A Yes.
- 14 | Q Okay so, so you not absolutely positive-
- 15 | A I'm positively sure beyond a shadow of a doubt.
- 16 | Q Positively sure that it's Jacob Woods?
- 17 A That it's you.
- 18 | O That it's Jacob? 'Cause-
- 19 A That it's you.
- 20 Q hold on first you said you positive that it's Jacob Woods
- could or right or wrong? First you just said it's Jacob
- 22 Woods-
- 23 A You can spin this all afternoon Omar. It's, Jacobs is
- 24 you. You gave me Jacob's name.
- 25 | Q Why, why would a person, why, why would, I never seen,

```
1
         well I can't testify, sorry about that. Why would a
         person give you a fake name-
2
         Because they're about to do somethin' illegal.
3
    Α
         a fake name, hold on just a second please man please I
4
         let you talk.
5
6
                   THE COURT: Witness, witness one second let him
7
         finish his question.
                   THE WITNESS: Sorry. I'm sorry sir.
8
9
                   THE COURT: Go right ahead Mr. Pouncy.
    BY MR. POUNCY:
10
         Why, could you please, you, have you, do you go around
11
         givin' people fake names? Or aliases if that's the
12
         proper word for it?
13
         No sir.
14
15
         You don't?
                    What'd make you think that I was the person?
         Just by appearance or what? Just by my facial features
16
         or what sir?
17
         Just because I spoke to you on three occasions, you spoke
18
         to me on the phone, we had a repertoire, we actually
19
         talked to each other on three occasions.
20
         When was those three occasions please?
21
         In September.
22
   Α
23
         September? Oh so you only seen this person three times
24
         'cause if, if it reflects you just said you seen this
25
         person four months-
```

A I didn't-

- 2 Q hold on, oh man could you hold on please? You just said
- it. Right or, right or wrong you just said you seen this
- 4 person more, on more than three occasions. Now you
- 5 statin' you seen this person three occasions. Come on
- 6 man this, this, this somebody, this somebody life. Could
- 7 you please be honest? You remember you under oath. You
- 8 know, are you aware of the penalties for perjury?
- 9 A Absolutely. Absolutely.
- 10 | Q So, so could you, okay could you please be honest.
- 11 A I didn't speak to you on the other two occasions.
- 12 O Hold on-
- 13 A You asked me if I spoke to you.
- 14 | Q okay you said you seen this person on three occasions and
- 15 | I wrote it down when you said it, when you, when um you
- 16 said it.
- 17 A I said I spoke to you on three occasions. That's what I
- 18 just said.
- 19 | Q But you didn't, you just said you spoke to the person
- 20 that looks like me, which everybody has a look-a-like,
- 21 you know what I'm sayin' and plus in all and okay, okay.
- Have you ever, do, you know what I'm sayin', okay damn
- man what, let me see. (Inaudible). Okay can I use this
- 24 scenario right? Okay say if you was to, say okay just
- 25 say if you were to, not bein' racist or anything like

that, please, please don't take it that way towards anyone, say if you was to get robbed or, or let's see not robbed let's see. Yeah robbed. Okay this what, this what this case is-

MR. LAROBARDIERE: Judge I would object to improper hypothetical.

THE COURT: Well I gotta hear what the hypothetical is first before I know if it's improper or not so proceed Mr. Pouncy.

## BY MR. POUNCY:

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3

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5

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13

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18

19

20

21

22

23

24

25

Thank you. Say if you was to get robbed by a, let's see, I don't want to be, I don't want to be racist or anything but if I'm not, please don't take this offensive but an Asian person, like Chinese, a Chinese person right and somebody you really don't have a lot of dealings with around or seen in person, you know what I'm sayin', a lot, and this person was to rob you or whatever and you, you don't have no type of proof to what this person, like his fingerprints or anything like that or a shoe print or where he lives, his, his name oh you, you have the person name or whatever, Jacob Woods, I'm sorry about that. um you was to get robbed by this person right, a Asian, a Asian person, you and your wife right? And so if you was to call the po, the, the law enforcement to serve and protect to help, help people out in a time of need in

cases like this when people break the law and, and rob people which is, which isn't right, you know what I mean but so then you call, I mean you call they come to you and you give a description of this person right? Of this Asian person who allegedly robbed you right? You, are you followin' through with me? I don't mean to lose you at all sir. And so you call, you don't have nothin', you don't have nothin' to, you know what I'm sayin' say nothin' but what you identification, how the person looked right or wrong, how the person looked. And then you give your police report, the police report say we get a line-up together or somethin' like that, could you identify this person and what, what would your answer be?

Q Yes.

Α

16 A I would say I can identify this person.

If I could identify that person-

Okay. Thank you. Okay so then later on, the next day you and your wife walkin' to, are you familiar with Clio Road? The Clio Road China Garden? You know that's a restaurant where Asian people work at in, produce food. They cook, actually produce good food, I eat there or whatever but you walk in the building right and you see this person, you walk in, you see this young man 'bout fit the description and the age that you said right? That you, that you gave to the police officer and then

you call the police, you call the police, like you go in a panic 'cause if I seen the person that robbed me or carjacked me I'd go in panic too you know what I mean? And you go in panic like you leave out the building, call the po, call the law enforcement like 9111 I, I see the person that carjacked me, that carjacked me or robbed me or whatever and it comes, they come, they come to um, the officers come to, to, 'cause you were complainin'. were complainin' and it's gonna be checked out. Probable cause, you know that's probable cause so this, this young man get arrested. But little did you know or little does your wife know that at the time during that you were, that you were allegedly robbed and carjacked by this Asian person that fit the description that worked at, at this Chi, at this China Garden, you call the police this, this young man get arrested right? And then they go to review, he gives his alibi or whatever and all that stuff, he gives his alibi and then the cameras or whatever show and his, or his boss or his time cards reflect that he was at work at this time. At the time of the thing, at the time of the incident right? Reason why I'm usin' a different, different race because me and you are different races and it's easily for one of us to get each other mixed up and mistaken identified. That's why, you know what I'm sayin' and a Asian person-

1

2

3

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19

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23

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THE COURT: Mr. Pouncy I'm gonna ask you to ask
1
2
         the question here because it sounds like to me you're,
         you're doin' a lot of testifyin' right now-
3
                                I apologize, I apologize.
4
                   MR. POUNCY:
                                                            I'm not
         used to this.
5
                   THE COURT: and I, and we're not gettin' the
6
7
         question so what is your question to this witness sir?
    BY MR. POUNCY:
8
9
         Okay would, how would you feel if that, if that reflects,
         that camera reflected that this person was actually
10
11
         working and, and his timecard which, oh okay, his
12
         timecard reflects that he was at work and, and you
         mistakenly identified this person? How would you feel
13
         deep down inside sir, Mr. Davis?
14
         I, I wouldn't make a, a, I wouldn't call the police
15
   Α
16
         unless I knew I had it right. I wouldn't make that
         mistake.
17
18
         That scenario 'cause remember you, you are, you, you,
         you, you admitted-
19
         That, that scenario went on for half-an-hour and I, I
20
   Α
         didn't really-
21
22
    Q
         oh you weren't done? (Inaudible) you wasn't done I will
23
         let you finish. Excuse me sir if you wasn't done I can
         let you finish but I thought you paused and you was done
24
25
         you know.
```

```
All right Omar.
1
         But you can go ahead if you want to though. How do you
2
         know, how did you know that this person that sit,
3
         standing in front of you now name is Omar? At first
4
5
         didn't you know this, didn't you say you knew this person
         name was Jacob Woods?
6
         No I said that you gave me the name Jacob Wood.
7
         The, the report states that you've known this person as
8
9
         Jacob Woods. You've known-
10
   Α
         I had been-
         when you know a person-
11
12
         listen, listen. Look can I just say it so we can get it
         over with?
13
14
         hold on.
                  Yeah go ahead no problem.
                   THE COURT: Mr. Pouncy I'm gonna ask you to
15
         stop. Witness please give your answer.
16
                   BY THE WITNESS: You said Jacob Woods to me at
17
         my facility all right? Before that on a Saturday night
18
         near Gracelawn Cemetery I was pointed at you by another
19
         quy that said that's Jacob, that's Sammie's brother. Now
20
         that part, that's the story, that's what you're goin',
21
         there it is all right?
22
    BY MR. POUNCY:
23
         Okay what time? What time was this?
24
         I don't have any idea?
25
```

- That's Saturday night? 1 Q It was, it was in May, it was in May or June of last year 2 Α and it was street rod nights on a Sunday, Saturday night, 3 4 right where you've been before-5 So you sayin' that I'm the person that street rod? 6 Α No, no, no you don't. You just hang out with the crowd. 7 I just hang out with the crowd? I don't know how, other ways to answer you Omar and now I 8 9 know you as Omar so I, I can call you Omar from here forward-10 11 So Omar wasn't the person that you know to, to do this 12 then right? To, to, to, well you didn't, did, first of all did you witness the carjacking and the armed robbery 13 14 take place sir? No I did not. 15 Α What actually did you witness? 16 17 I, I witnessed you come into my store, three occasions-18 Your store? Where is the store located 'cause I don't 19 know. 20 Oh you never been there? 21 No I never been there before. I don't, no I never been 22 there before. Can you reflect to me where it's located at? 23 3614 Richfield Road. 24 Α
- 25 Q What, what, what city and state is that in and the

```
1
         county?
         Flint, right, right on the east side of town.
2
         Okay you know what time did this Jacob Woods, person
3
         known as Jacob Woods-
4
5
   Α
         It was, it was late in the afternoon all three times,
         four or five o'clock in the afternoon.
6
7
         Four or five o'clock in the afternoon all three times?
8
         Um hm.
         Four or five o'clock in the afternoon, four or five,
9
10
         sorry about that. Four or five o'clock in the afternoon
         'cause the report states that these, the, the um-
11
12
                   THE COURT: Mr. Pouncy you can ask questions.
         You can't talk about what somebody else states.
13
14
    BY MR. POUNCY:
         Okay so when you, okay four or five o'clock in the
15
         afternoon, okay I'm just, my memory, so you said this
16
         person came to your, came to your station at four or five
17
         o'clock in the afternoon and twenty-five minutes later
18
19
         you got a call from your who? Was it a male or a female
         who called you?
20
         My friend Ed Brady.
21
    Α
         Is that a male or a female?
22
23
    Α
         It's a male.
         He called you (inaudible) so, okay what time did the
24
         person leave? Around what time, can you give me
25
```

approximate time please? 1 I, you know it was, it was in the afternoon, I 2 Α wasn't closed yet. So on that last day it could have 3 been earlier in the afternoon like three o'clock. But-4 Hold on, hold on, excuse me. 5 but, but, but here's the deal. The first two times you 6 7 came-Hold on, three o'clock? Three o'clock. 8 THE COURT: Just one second Mr. Pouncy please. 9 THE WITNESS: he first two times you came I was 10 11 about to close up because I drove the car out back. MR. POUNCY: Um hm. 12 THE WITNESS: The third time you, you came, I 13 was open for a few more hours so it was earlier in the 14 afternoon. 15 16 MR. POUNCY: Is it-THE WITNESS: I, I will tell ya, I will tell ya 17 this much. I, I didn't spend a lot of time tryin' to 18 figure all this out. 19 BY MR. POUNCY: 20 So you, hold on. So first you say between four and five 21 o'clock, now you changin' the time and which this time is 22 23 real significant in this case because the person that's bein', do, hold on. Do you agree that the time part is 24 25 significant in this case because the person that is the

1	defendant, if, if the defendant was at work at these
2	times wouldn't you believe that the time would be a
3	significant part?
4	A Yes it would be significant.
5	Q 'Cause, 'cause now you're changin' up your story and
6	bein' contradictory. First, first I'm gonna start, first
7	you, first it states-
8	THE COURT: Mr. Pouncy you're here to ask
9	questions and if you don't-
10	MR. POUNCY: Okay.
11	THE COURT: sir I'm serious. If you don't ask
12	questions I'm gonna make you sit down okay? 'Cause I'm
13	not gonna have this continued bantering back and forth.
14	The reason you're there is to ask a question.
15	MR. POUNCY: All right. I'm just tryin' to get
16	to the bottom of this mistaken identity.
17	THE COURT: Sir if you're gonna get to the
18	bottom of it you need to ask questions okay?
19	MR. POUNCY: Okay.
20	THE COURT: And if you're not gonna ask
21	questions then I'm gonna have you sit down.
22	BY MR. POUNCY:
23	Q Okay do you have, do you have any facts, any facts like
24	far as DNA, fingerprints or, or anything, shoeprints, to
25	identify the person that came besides his facial features

```
which you already, which you already um-
1
                   THE COURT: Mr. Pouncy-
2
                   MR. POUNCY: I'm, I'm 'bout to ask the
3
4
         question.
                   THE COURT: Well get to your question please.
5
                   MR. POUNCY:
                               Okay.
6
    BY MR. POUNCY:
7
         Which you already made a statement that you had, that it
8
         is possible for mistaken identify right?
9
10
                   THE COURT:
                               Well you're askin' two or three
         questions in there.
11
                   MR. POUNCY: Okay yeah I am.
12
                   THE COURT: You need to ask one question.
13
14
                   MR. POUNCY: Okay. Sorry, sorry. Jury I'm
         sorry about that you know what I'm sayin', everybody.
15
    BY MR. POUNCY:
16
         But um do you have any DNA, fingerprints, footprints or
17
         anything, flesh, blood to, to prove that this, the
18
         person, to prove that the person that came to you on that
19
         day is actually, is it all right if I refer to myself?
20
                   THE COURT: Sir I just want you to ask the
21
         question. I'll let you decide-
22
    BY MR. POUNCY:
23
         Okay to actually prove that the person was me, Omar
24
         Pouncy not Jacob Woods?
25
```

1	A	All I have is, is the description that I gave the officer
2		when he came to see me and the pictures that he showed me
3		when he came back.
4	Q	Okay. Now let me ask you this question. How would you
5		feel if you was the victim of a mistaken identity?
6		MR. LAROBARDIRE: Object to relevance Judge.
7		THE COURT: I would sustain the objection. How
8		he feels is not relevant.
9		MR. POUNCY: Okay. Okay. I need to ask a
10		question can you hold on a second?
11		THE COURT: Yes go right ahead sir.
12		MR. POUNCY: Can um, may I approach with this
13		article you know what I'm sayin'? And you ain't got to
14		be real hard on me you know what I'm sayin', I'm not-
15		THE COURT: Let Mr. Larobardiere take at least
16		a look at the article that you're proposing to present.
17		MR. POUNCY: Yeah 'cause it's just stuff that I
18		got (inaudible).
19		THE COURT: Please no comments Mr. Pouncy.
20		Just hand the article to Mr. Larobardiere.
21		MR. LAROBARDIERE: I've seen that.
22		THE COURT: You know what the article is?
23		MR. LAROBARDIERE: Yes.
24		THE COURT: All right then you may approach
25		then. There's no objection so approach.

1	MR. LAROBARDIERE: Well I object.
2	THE COURT: I haven't heard you stand and
3	approach. If you're gonna, I mean object. If you're
4	gonna, just one second. Mr. Pouncy-
5	MR. POUNCY: Yes.
6	THE COURT: you're not to turn and say anything
7	to the jurors like that sir please.
8	MR. POUNCY: All right.
9	THE COURT: If you are objecting then stand so
10	I'll know you're objecting.
11	MR. LAROBARDIERE: I object to relevance Judge.
12	THE COURT: All right the objection is
13	relevance. What's your response to that Mr. Pouncy?
14	MR. POUNCY: Um my response is this, this is
15	just a report that proves-
16	THE COURT: Okay and I don't want you to tell
17	the jurors what that is. I want you to respond to his
18	legal objection as to relevancy sir.
19	MR. POUNCY: Oh this, oh this um Mr.
20	Larobardiere-
21	THE COURT: And sir you have to address the
22	Court.
23	MR. POUNCY: Oh the Court?
24	THE COURT: Yes. He's objected he's sayin'
25	it's not the, this article that you're tryin' to show is

not relevant meaning it does, it, it isn't of any value.

It doesn't help to determine a fact that's at issue in this case.

MR. POUNCY: Um I believe it, it does because this, this article out the Flint Journal Newspaper reflects that um, can I re, tell you what it says, the relevance of it?

THE COURT: Yeah you can tell me what you believe is relevant about it sir.

MR. POUNCY: Okay what I believe is relevant about it because my defense is mistaken identificationTHE COURT: Okay.

MR. POUNCY: based on the reason why, based on the, the, based on um them, people, well, well people sayin' that I, I look like someone and this is a article that proves that that is proven to be flawless in, in you tryin' to convict, in tryin' to convict someone, someone mistaken identification-

THE COURT: I would have to agree with him. I would have to sustain his objection as to relevance because you would have to have an expert here to make that argument. You can't just take a newspaper article and use it-

MR. POUNCY: Okay.

THE COURT: because a newspaper article is not,

```
whoever wrote that article they're not under oath-
 1
                   MR. POUNCY: Yeah they've, okay.
2
                   THE COURT: they don't have to be placed under
 3
 4
         oath and so it's just not appropriate so I would sustain
 5
         his objection.
                   MR. POUNCY: I'm sorry about that man. I, I
 6
7
         concur.
8
                   THE COURT:
                                That's okay. Now do you have any
9
         other questions for this witness?
    BY MR. POUNCY:
10
         Yes. So, so do, you do agree with um mis, that mistaken
11
         identity is real huh?
12
13
    Α
         Yes it is real.
14
         Okay so with that and not tryin' to, you know what I'm
15
         sayin', put you down for your vision or anything like
16
         that, don't get me wrong, could, could it be a
17
         possibility that you think, even though you know what I'm
18
         saying, okay it, could it be a possibility that the
19
         person come, due, due to this, that you picked out three
20
         people, three different people off a photo? Yeah three-
         (Inaudible) three different people.
21
    Α
         Well let me, well first, okay, okay
22
23
    Α
         I did make a mistake in the beginning with the black and
         white photograph-
24
25
         Oh-
    0
```

```
you, you have to forgive me that one. That picture's
1
         awful.
2
3
         Okay-
         He, he looks somewhat like you and I thought you were
4
         showin' me and not tryin' to back door me with a, with a
5
         wrong photo group of pictures.
6
7
         Okay I forgive you, I forgive you even more-
                   THE COURT: Mr. Pouncy I think I'm gonna end
8
                Please have a seat sir.
9
10
                   MR. POUNCY: All right thank you.
                   THE COURT: Any re-direct Mr. Larobardiere?
11
12
                   MR. LAROBARDIERE: Yes Judge.
                          RE-DIRECT EXAMINATION
13
14
   BY MR. LAROBARDIERE:
         Mr. Davis-
15
                   MR. POUNCY: Oh here are the pictures back.
16
         Thanks I appreciate it. Sorry about that.
17
   BY MR. LAROBARDIERE:
18
19
         you uh, in, in meeting with Mr. Pouncy, did you also talk
    to him, have verbal discussions?
20
         Absolutely.
21
         We discussed you identifyin' him by sight but after he's
22
         had a chance to question you did you recognize his voice
23
         also?
24
         Yes. Yes most definitely.
25
    Α
```

```
All right. Any question in your mind, same person that
1
         you talked to of those three occasions that you
2
         (inaudible)?
3
         None whatsoever.
4
                   MR. LAROBARDIERE: Nothing further Judge.
5
                        THE COURT: You may step down sir.
                                                             Thank
6
7
         you very much. Can this witness be excused Mr.
         Larobardiere?
8
                   MR. LAROBARDIERE: Yes.
9
10
                        THE COURT: Mr. Pouncy this witness be
         excused sir?
11
                   MR. POUNCY: I don't know what that mean.
12
         yeah he can go yeah.
13
                    (At 3:57 p.m., witness excused)
14
                   THE COURT: All right call your next witness
15
         Mr. Larobardiere.
16
                   MR. LAROBARDIERE:
                                      Thank you Judge. People
17
         call Earl Brady.
18
                   THE COURT: All right.
19
                   MR. POUNCY: Thank you too Mr. Davis.
20
21
         you.
22
                   THE COURT: Mr. Pouncy would you please keep
23
         your voice down? I don't want the jurors to hear what
24
         you're talkin'-
                   MR. POUNCY: (Inaudible).
25
```

```
THE COURT: Okay thank you sir. Good afternoon
1
         sir.
                   MR. BRADY: Afternoon.
3
                   THE COURT: If you'll raise your right hand
4
         please? Solemnly swear or affirm the testimony you give
5
         today will be the truth so help you God? Please pull
6
7
         that door toward you sir, step on up and have a seat and
         Mr. Larobardiere when you're ready you may proceed.
8
9
                               EARL BRADY
         Called as a witness at 3:58 p.m., testified as follows:
10
                           DIRECT EXAMINATION
11
12
    BY MR. LAROBARDIERE:
         Sir please state your name and spell your first and last
13
         name for the record.
14
    Α
         Earl E. Brady, E-a-r-l B-r-a-d-y.
15
         Thank you Mr. Brady. I'd like to refer you to the events
16
         occurring on or about September 29th 2005. On that day,
17
         on that time did you own this vehicle on the screen?
18
    Α
         Yes.
19
20
         You make, enter into an arrangement to have it displayed
    Q
21
         for sale at some place?
    Α
         Yes.
22
23
         And where was that?
         At Scott's Racing.
24
    Α
         Where is that located?
25
```

I think it's Flint but it's on Richfield Road. 1 All right and at some point did you receive a call about 2 an interested party about purchasing the car? 3 Yes Mr. Davis called me and said there was a, a person Α 4 stopped by three times that was, looked at the car and 5 was interested in purchasing it. 6 7 And what did that cause you to do after hearing that? 8 He said if I would, if I was interested in sellin' to, if 9 I would bring my truck and the trailer up, okay, that the person that was interested in purchasing it wanted to 10 11 take it to their mechanic to have them, you know, review 12 the car and so on like that and that particular kind of car is not streetable, it's a race car so it, you know 13 14 it's typical to put on a trailer. Do you recognize this item on the screen? 15 Q Α Yes that's my trailer. 16 And does this photo accurately represent the trailer-17 Α Yes. 18 that you owned? This also be on September 29<sup>th</sup> 2005? 19 20 Α Right. 21 MR. LAROBARDIERE: Judge I ask that People's 22 number 2 be admitted. 23 THE COURT: Any objection to number 2 Mr. 24 Pouncy? 25 MR. POUNCY: That's, that-

```
THE COURT: Number 2 is in.
1
                      (At 3:59 p.m., PX 2 admitted)
2
    BY MR. LAROBARDIERE:
3
         Recognize this item? This is proposed People's exhibit
4
         number 3.
5
                     (At 3:59 p.m., PX 3 introduced)
6
7
    Α
         Yes that's my pick-up, '03 Ford pick-up-
         All right.
8
         and that's the one the trailer and the car was hooked to.
9
         Okay. So you hooked, Judge this picture, or first Mr.
10
11
         Brady this accurately represents the '03 pick-up you
         owned on September 29th?
12
         Right.
    Α
13
                   MR. LAROBARDIERE: I'll ask number 3 be
14
         admitted Judge.
15
16
                    THE COURT: Any objection to number 3 Mr.
         Pouncy?
17
                   MR. POUNCY: No (inaudible).
18
19
                    THE COURT: All right 3 is in.
20
                      (At 4:00 p.m., PX 3 admitted)
21
    BY MR. LAROBARDIERE:
         So you hooked up this truck, trailer and proceeded to the
22
    Q
23
         Davis Race Shop?
         Yes.
24
    Α
25
         Was anyone with you?
```

Α

0

12

16

Yes.

- Patrick Wendell. 1 A. All right and how do you know Mr. Davis and Mr. Wendell? 2 Mr. Wendell lives in my neighborhood and so on like that, 3 Α I've known him for many years and we're just friends that 4 5 hang out together. Mr. Davis has a speed shop. known him for probably four or five years, he's worked on 6 7 numerous vehicles of mine and actually the, the, well go ahead. 8 9 Okay you've known Mr. Davis for a while as well? 10 I'd say a good four to five years. Okay. You and Mr. Wendell arrived at the race shop-11 Q
- Q and this is on September 29<sup>th</sup> 2005. What time?

  A I want to stay in the neighborhood of one thirty,

All right and what happened at that point?

- somewhere around in there, p.m.
- The suspected buyer was supposed to meet us there 17 approximately about that time. He was probably a half-18 19 hour, forty-five minutes late. They finally showed up, 20 there was three of them in a grey Intrepid. talked to them, they, you know, we, said he was 21 22 interested in the car, wanted to know if I would take it 23 to his mechanic to look at it. And we said okay and we 24 you know loaded the car up. We talked to him, he asked me if he could have my cell number so that if we go, 25

1		because I'm not familiar with Flint and so on like that
2		right? If I was following him if he, you know had my
3		cell number you know if we got separated or whatever he
4		would call me and make sure we, you know, were goin' in
5	·	the right direction.
6	Q	Did you give him your phone, telephone number?
7	A	Yes I did. I gave him my cell number.
8	Q	Okay do you recognize the person here today who that
9		approached you about buyin' your car?
10	A	Yes I do.
11	Q	Can you point to where you see him and describe the
12		clothing he's wearing.
13	A	Right there.
14	Q	Okay what clothing is he wearing?
15	A	What clothes was he wearing that day?
16	Q	What clothes is he wearing today?
17	A	Oh yeah the white shirt.
18		MR. LAROBARDIERE: Okay Judge may the record
19		reflect the witness has identified Mr. Pouncy.
20		THE COURT: Absent objection the record shall
21		reflect the identification of Mr. Pouncy.
22		MR. POUNCY: Pardon me?
23		THE COURT: I said absent objection the record
24		shall reflect your identification.
25		MR. POUNCY: Oh no problem.

```
(Judge Archie L. Hayman; 01-24-06; 4:02 p.m.)
1
                    THE COURT: Go right ahead Mr. Larobardiere.
2
    BY MR. LAROBARDIERE:
3
         You had a face-to-face discussion with Mr. Pouncy at the
4
5
         race shop before-
6
    Α
         Yes.
7
         went anywhere?
8
    Α
         Correct.
9
         How close were you to Mr. Pouncy when this took place?
         Three feet, if that.
                                Two to three feet.
10
11
    0
         All right. How long did you talk to him at three feet's
         distance?
12
    Α
         We were probably there less than ten minutes, five to ten
13
         minutes.
14
         All right. You arrived in a, what kind of vehicle?
15
    Q
         '03, '03 Ford pick-up.
16
    Α
         You, you arrived in that correct?
17
18
    Α
         Yes.
         Did you see what kind of vehicle he arrived in?
19
20
    Α
         Yes he was, yeah I don't know what year it was, it was a
21
         grey Intrepid.
22
    Q
         You recognize this, this vehicle on the screen?
23
    Α
         That looks familiar to me, yes.
         Okay how do you recognize it?
24
    Q
25
    Α
         It looks, you know just a grey Intrepid, that's, you know
```

```
I don't know if that's the exact car but that's what it
1
         looked like.
2
         All right you have a discussion about goin' to the
3
         mechanic. Did he use the uh, did he use a name for the
4
         mechanic?
5
6
    Α
         It was some shop or whatever and I, I don't recall what
7
         it is right off, no okay.
8
         Did he tell you what street you're gonna go to?
         No.
9
    Α
10
         Do you know what street you eventually ended up at?
    Α
         Kellar.
11
12
         Okay. Tell the Court what happens as you are driving
         this Camaro on the truck and trailer on your way to
13
14
         Kellar.
15
    Α
         After we left Scott's speed shop, my phone rang, I
16
         answered it and so on like that and he asked me on the
         way there that when we got to where we was going if I
17
         would back my truck and trailer into the driveway where
18
```

- 19 we were going so that if they decide to purchase it we 20 could just push the car off you know and leave it there 21 okay?
- 22 Q Okay did you do that?
- 23 Α Yes we did.
- 24 Do you recognize this house?
- 25 Yes, yes I do.

```
Tell us how you recognize that.
1
         That's the house they took us to where we backed the, the
2
3
         vehicle into the driveway.
         Mark that as People's proposed exhibit number 5 and you
4
5
         did in fact back the trailer-
                     (At 4:05 p.m., PX 5 introduced)
6
         Yes I backed the truck trailer into the driveway, yes.
7
   Α
         All right it was this house?
         Yes that house.
9
   Α
         All right. Does this picture accurately represent the
10
         house you backed up to?
11
         Yes because I remember the van sittin' there and the
12
13
         garage door open like that and you know sloped in the
         middle and so on like that, yes that's, that's the house.
14
                   MR. LAROBARDIERE: Judge I'll ask that People's
15
         number 5 be admitted?
16
                   THE COURT: Any objection to number 5 Mr.
17
18
         Pouncy.
19
                   MR. POUNCY: Yes I object.
20
                   THE COURT: What's your basis for your
         objection sir?
21
                   MR. POUNCY: Um cause um, 'cause I don't think
22
         that, it stated they were goin' to, I don't think that's
23
24
         King Automotive 'cause King, what street is that located
25
         on?
```

```
THE COURT: I'm not sure sir but what is your
1
         objection to the picture is my question.
2
                   MR. POUNCY: I don't think that's King
3
         Automotive. That's where they said they went to.
4
                    THE COURT: I would overrule the objection and
5
         5 is admitted over objection. You may proceed Mr.
6
7
         Larobardiere.
                      (At 4:05 p.m., PX 5 admitted)
8
9
                    MR. LAROBARDIERE: Thank you Judge.
    BY MR. LAROBARDIRE:
10
         Tell the Court what happened once you arrived at this
11
         address.
12
         We were there and we were talking to him and he got on is
    Α
13
         cell phone and said-
14
         Let me interrupt you-
15
    Q
16
    Α
         Okay.
         When you say we're talkin' to him, who are you talkin'
17
         about?
18
19
         Who we were talking to?
    Α
20
         Are you talking, are you talking with the potential
    Q
         buyer?
21
22
    Α
         Yeah there was, there was three people there okay?
         All right so and you need to clarify who, who are you
23
         talking to?
24
         This gentleman here in the white shirt.
25
    Α
```

Q Mr. Pouncy?

Yes okay? And he had two associates with him okay? And once we backed the vehicle in the driveway and so on like that, got out of the truck, they walked up, we started to talk about the car, he walked off into the grass towards the house, got on his cell phone, come back and said he just got a hold of his mechanic and his mechanic was on his way, it'd be just a matter of a few minutes, I said which is fine. So on that particular car uh this you know fiberglass hood which lifts off and so on like that okay, so we took the hood off the car, put it on top of the car, show him the functions of the car like you normally would on a race car and so on like that, started the car up, went through the, you know, the motions inside the car, what it does, what works what so on and so forth like that okay? And then-

- Q This car have a special way to start it?
- 18 A Yes it's a, it doesn't have a regular key ignition and so
  19 on like that, like I said it's a race car. It has
  20 switches on it with a push button start and so on like
  21 that okay?
- 22 Q All right did a mechanic ever show up?
- 23 A No.
- 24 Q What happened at that point?
- 25 A At that point one of his associates was standing there

```
with us listening to the conversation. We walked around the car a couple times looking at it so on like that and he pulled out a handgun and pointed it at me.
```

- Q All right let me interrupt.
- 5 A Okay.

- 6 Q Mr. Pouncy with, with two other people?
- 7 A Correct.
- 8 Q And describe for me those two other people.
  - I would say they're both in the neighborhood, in their early twenties, so on and so forth like that. The one guy, the, off to the right of me was a little smaller, had a hood sweatshirt on, so on and so forth like that.

    Looked, like I said, looked to be in his early twenties, probably hundred and thirty, hundred and forty pounds okay? The other gentleman to, the one in the middle there, actually at the time that the one in the middle, Mr. Pouncy there was off to the left okay? The one in the middle's the one that pulled the gun. He's probably, I want to say 5'8", somewhere around in there, hundred and fifty pounds so on like that.
  - Q Okay I'd like a little more detail on the description of the person who pulled the gun.
  - A He had a, a special kind of hairdo, I don't know if they call 'em corn rolls, dreadlocks, so on so forth like that okay?

- Q All right is it fair to say his hair was longer or short?
- 2 A No it was done up tight okay so the hair wasn't long.
- 3 Q Okay.

1

13

14

15

16

17

18

19

20

21

22

23

24

- 4 A Well I don't know what you consider long but I mean it
  5 wasn't, you know it wasn't like a brush cut or anything
  6 like that okay? It was just rolled tight to his head.
- 7 Q All right and he produced a, a weapon?
- 8 A Correct.
- 9 Q And describe that for us.
- A At that point it looked very large, it was black, little bit silver, looked to be like an automatic weapon.
- 12 | Q All right what happened at that point?
  - Actually when he pulled the weapon and so on like that he asked me for my keys and my cell phone and I, I refused so on like that and he had a few choice words for me and he asked me if I wanted to die and I said no and he said well give me your keys and your cell phone and I refused to. And then he told me to get down on the ground, I refused to. You know I said hey you know put the thing away, what's up? I thought you wanted to buy a car okay? And then after that point he shot one round off in the air and pointed at my heart and he says now do you want to die, the next one's in your heart, give me your keys and your cell phone.
  - Q Did you do it?

- 1 A At that point yes I give him my keys and my cell phone.
- 2 Q Were you in fear?
- 3 A Yes.
- 4 Q Who did you give your keys and cell phone to?
- 5 A I don't know who his name is but was the smaller guy of
- 6 the, of the three. He was standing off to the right.
- 7 Q Okay and-
- 8 | A Actually I, the, the one that pulled the gun okay,
- 9 he asked for the keys and the cell phone and I went to
- 10 hand it to him to get to close to him and he wouldn't let
- 11 me get close to him. He told me to hand it to the other
- 12 guy while he held the gun on me.
- 13 | Q Okay. Where was Mr. Wendell at this point?
- 14 A Mr. Wendell was off to my left okay?
- 15 | Q Now Mr. Davis was with you or at his race shop?
- 16 A He never left the race shop with us no.
- 17 | Q All right so you gave up your cell phone and keys-
- 18 A Correct.
- 19 | Q and did you see Mr. Wendell give up anything?
- 20 A Yes he gived up his phone.
- 21 | Q His phone?
- 22 | A Um hm.
- 23 | Q Okay and what happened after that?
- 24 A Actually after that they, they told us to walk across the
- 25 street into the woods or the vacant lot or whatever it

```
1
         was and don't come back. So we left, we went across the
         street, heard the vehicle start and leave and next door
2
         to the house that you have there, it'd be off to the
         right looking at that picture, there was two guys
4
5
         working, renovating a house. We walked back to them,
         asked them for help and they took us to the police
6
7
         station.
         Do you recognize that picture?
8
9
         That looks to be the house that was off to the right to
10
         where the, the gentlemen were working on.
                   MR. LAROBARDIERE: Judge I'll ask that be
11
12
         admitted as People's number 6.
                   THE COURT: Any objection to number 6 Mr.
13
         Pouncy?
14
15
                   MR. POUNCY: No objection.
16
                   THE COURT: Six is in.
17
              (At 4:11 p.m., PX 6 introduced and admitted)
18
    BY MR. LAROBARDIERE:
19
         What happened once you arrived at this house?
20
         We talked to the gentlemen there working and so on like
21
         that and they said, you know we asked them if they heard
         the shot or whatever and they said they seen us pull in
22
         with the car on the trailer and so on like that and they
23
         thought maybe just the car backfired or whatever so we
         told 'em no that that was a gun discharge and so on like
25
```

- that and they said well let us pick up our tools, we
  don't want to work in this neighborhood anyway, and they
  loaded their tools in their vehicle and took us to the
  police station.
- 5 Q Okay so they stopped working and-
- 6 A Yes.
- 7 | Q went with you to the police department?
- 8 A Yes.
- 9 Q You say you were told to run to the woods?
- 10 | A Yes.
- 11 Q How far into the woods did you go?
- 12 A At that point it, it's hard to say but probably a short
  13 distance into the wooded area and hid behind the trees.
- 14 Q Do you recognize this picture?
- 15 A Yeah it looks like the brush we ran into yes.
- 16 Q Why did you run to those woods?
- 17 A Pardon me?
- 18 | Q Why did you run to those woods?
- 19 A Because they were holdin' a gun on us and told us to run
- 20 to the woods and if we wanted to live.
- 21 Q You did just that?
- 22 A Exactly.
- 23 Q How long did you stay in these woods?
- 24 A We probably weren't in there less than five minutes or
- whatever 'cause, you know my, my vehicle's a diesel so

```
it's real distinctive when it starts and leaves and so on
1
         like that so once the vehicle left the premises we were
2
         at we figured it was safe to go look for some help.
3
                   MR. LAROBARDIERE: Judge I'll ask, I'll mark
4
         and ask that this be admitted as People's number 7.
5
                   THE COURT: Any objection to number 7 Mr.
6
7
         Pouncy?
                   MR. POUNCY: No problem. That, that's the
8
9
         woods on-
10
                   THE COURT: I, I-
11
                   MR. POUNCY: at the crime of the scene?
12
         objection. No objection.
                   THE COURT: I don't want to make any comments.
13
         All I'm gonna say is I, I will admit. Proceed Mr.
14
         Larobardiere.
15
16
              (At 4:13 p.m., PX 7 introduced and admitted)
                   MR. LAROBARDIERE:
17
                                       Thank you.
    BY MR. LAROBARDIERE:
18
19
         When you went back to the house on Kellar, this house,
20
         was your truck and trailer and Camaro there?
21
    Α
         No.
         Did you see where they went at all?
22
         No that particular, the house right there is on a dead
23
24
         end street, it's the last house on the right and where it
25
         went from there I have no idea.
```

```
MR. LAROBARDIERE: One moment Judge. Nothing
1
         further Judge.
2
                   THE COURT: Cross-examination Mr. Pouncy.
3
4
                   MR. POUNCY: Just a second please.
5
         (Inaudible). Not those the um photo line-up and in color
         please so we won't have no discrepancies. Yeah that one
6
7
         right there. Thank you. That's it right there.
8
         right here.
                   MR. LAROBARDIERE: Judge I'm gonna have to
9
         object. He wants to approach a witness with various
10
         photo line-ups. I think it's an attempt to confuse the
11
         witness.
                   That's my objection.
12
13
                   THE COURT: Well he, if he's asked for that
14
         photo line-up I'm gonna ask you to hand it to him.
                   MR. LAROBARDIERE: All right.
15
16
                   MR. POUNCY: That's what was-
17
                   THE COURT: No I think he wanted the one that's
18
         on the right.
19
                   MR. POUNCY: Yeah was that the-
20
                   THE COURT: Yes that, is that the one you asked
         for Mr. Pouncy?
21
22
                   MR. POUNCY: Yes please.
23
                               All right hand that one to him
                   THE COURT:
         please.
24
                                Thank you.
25
                   MR. POUNCY:
```

```
THE COURT:
                                Proceed sir.
 1
                            CROSS-EXAMINATION
 2
    BY MR. POUNCY:
 3
         How you doin' today sir?
 5
    Α
         Good.
 6
         Want to restate your name again 'cause I, I-
7
         Earl, Earl E. Brady, B-r-a-d-y.
    Ά
8
         Is it all right if I call you Mr. Brady?
9
    Α
         Fine.
         All right no problem. Okay um, um, first of all did you,
10
         if I recall you pointed to the person that was sittin' in
11
         that chair right there right? Where, where I was sittin'
12
13
         at?
14
         Which is you yes.
    Α
         Yes okay um you, what did you call that person, what was
15
         his name?
16
17
    Α
         Pardon me?
18
         What, what was that person's name that you called him?
19
         When you were just sitting right there?
         Yes, well my name, what's my name? 'Cause you called me
20
         somethin', a name over there.
21
         Okay well I understand your name is Omar.
22
    Α
23
         Okay how did you get that understanding?
24
         That's, I understand that's what your name is.
25
         How did you get that-
```

```
When, when I, when I met you at Scott's Race Shop okay
 1
    Α
         you introduced yourself as Jacob Woods-
 3
    Q
         Um hm.
         okay which apparently is an alias or whatever and so on
 4
    A
         like, I don't-
 5
         That's your, that's your theory?
    Q
 6
 7
                   THE COURT: And if you don't mind, just one
         second please, I want you to answer his direct question.
 8
 9
                   THE WITNESS: Okay.
10
                   THE COURT: His question was how did you know
         his name is Omar, that's the question.
11
12
                   THE WITNESS: After I picked it up out of the
13
         line-up.
    BY MR. POUNCY:
14
         After you pick, when, when did you pick me up out
15
16
         of a line-up or a person that looks like me out of a
         line-up?
17
18
         I don't remember exactly what date it was but the Mt.
         Morris Police Department called me up and asked me to
19
20
         look at a line-up.
         'Cause I don't have a record of that-
21
                   THE COURT: Mr. Pouncy please no testifying.
22
         If you want to ask this witness a question, you ask a
23
         question. If you don't ask questions I'm going to make
24
25
         you sit down.
```

```
MR. POUNCY: All right, all right I'm sorry but
 1
         all right. Can I ask him a question?
 2
                    THE COURT: No sir.
 3
                    MR. POUNCY: Oh okay.
 4
                    THE COURT: You can only ask this man a
 5
         question.
 6
    BY MR. POUNCY:
 7
         So you don't know what date that you looked at this line-
 9
         up?
         It was after the date that my vehicle was taken, yes
10
    Α
         okay?
11
         Which was-
12
    Q
         My vehicle was taken September 29th.
13
    A
         September 29<sup>th</sup>. What kind of vehicle did you have?
14
    Q
         The ones that was in the photo there. I was drivin' an
15
    Α
         '03 Ford pick-up on a trailer and a '79 Camaro.
16
    0
         ' 04 -
17
18
    Α
         '03 Ford pick-up-
         and a what again?
19
20
         '79 Camaro was hooked to the, on the trailer.
         Or there's a trailer involved too?
21
         Trailer was hooked to the truck and the Camaro was on top
22
    Α
         of the trailer.
23
         Okay. So how did you come about meetin' this guy that
24
25
         you known as Jacob Woods?
```

- 1 A At Scott's Race Shop.
- 2 | Q Scott's Race Shop, where is that, oh I think on-
- 3 A It's in Richfield in Flint.
- 4 | Q Yeah I heard that earlier.
- 5 A Well I think it's Flint Township, I'm not positive but
- 6 right there.
- 7 | Q So you're not sure what city it's in, township or
- 8 anything?
- 9 A I'll just say Flint.
- 10 Q So can you be, please be positive and-
- 11 A Positive it's Flint.
- 12 | Q 'Cause this is, you know this is a trial right and-
- 13 A It's Flint.
- 14 | Q It's Flint? What makes you think Flint after you just
- said you, you think you know? What makes you-
- 16 | A 'Cause I remember seein' the signs when I come in there,
- 17 here in Flint.
- 18 Q Why did you, didn't say, why wasn't you positive before?
- 19 A Because I'm not from the area so I'm not a hundred
- 20 percent sure okay of what the-
- 21 Q Oh so, so you still not a hundred percent sure?
- 22 A Yes I am.
- 23 Q But you just told me you're not a hundred percent sure.
- 24 | A I just told you yes I am.
- 25 Q If a person was to say somethin' to you and then say

```
somethin' else, what would you take that as?
1
         Contradictory statements?
2
         My ans, my answer is yes it's in Flint.
3
    Α
                   MR. LAROBARDIERE: Judge I object to
4
         hypothetical proposal by him.
5
                   THE COURT: Well I would sustain on the basis
6
7
         that the question is uh, is ambiguous.
                   MR. POUNCY: All right.
8
                   THE COURT: And so I'm gonna ask you to ask a
9
10
         more clear question Mr. Pouncy.
                   MR. POUNCY: Okay a clearer question. Sorry
11
         about that.
12
    BY MR. POUNCY:
13
         If, if a person was to state, okay if you was to state,
14
         if you was to state, if a person sayin' somethin' to you
15
         right? Talkin' to you, a person talkin' to you was to
16
         say one thing this minute and then refer, and then turn
17
         around and say a total different thing, what would you
18
         take that as?
19
20
   Α
         Well if somebody was tryin' to trick me with a question
         and so on like that okay, uh-
21
22
    Q
         Hold on could you, no, could you ask that question, what,
23
         answer the question I just asked you. What would you
         take that as?
24
25
                   THE COURT: Mr. Pouncy Mr. Larobardiere hasn't
```

```
stood up and objected but that is not an appropriate
 1
         question okay?
 2
                    MR. POUNCY: Okay.
 3
 4
                    THE COURT: What this gentleman thinks is not
 5
         relevant okay? All right-
                    MR. POUNCY: Okay so what he think doesn't,
 6
 7
         okay.
 8
                    THE COURT: okay sir so please ask a question
9
         that's relevant or I'm gonna have you sit down.
10
                    MR. POUNCY: All right.
    BY MR. POUNCY:
11
12
         So, so you, so what day, you, what day was your vehicle,
13
         um, you said Ford truck right?
         Correct.
14
15
         And a trailer and a Chevy-
         Camaro.
16
    Α
         Camaro okay, I didn't know that. What day was it tooken
17
18
         from you?
19
    Α
         Didn't you just write it down? September 29th.
20
                    THE COURT: Well and that, that question's been
21
         asked so I'm gonna ask you to move on.
    BY MR. POUNCY:
22
         September 29<sup>th</sup>. You know um around about what time?
23
24
         what, what time please specific time.
25
         What time what was now?
```

That it was tooken from you? 1 Q Uh well it was probably somewhere in the neighborhood of 2 two fifteen, somethin' like that. Two fifteen, two 3 4 thirty. 5 Two fifteen. Just a second please. Two fifteen, two thirty okay so you, if I recall, when I asked you said 6 you known that person as Jacob Wood, Wood or Woods, 7 whatever you said? 8 9 When you showed up at Scott's Race Shop, yes that's how 10 you were introduced. 11 Okay. What, who, who, can I ask you who showed you a photo line-up 'cause it's, it's not on record and what 12 day? 13 14 Α I don't know what day exactly. It was the Mt. Morris Police Department. 15 16 May I ask you which officer, the name of the officer 17 please? 18 That one right there. 19 Okay so you, you not, you don't remember which day right? 20 They called me, you know a few days after the, the 21 incident happened. I don't recall exactly what day it 22 was no. 23 Okay so you say a few days after, there's only like 24 thirty days in, in September.

No less than thirty days. Less-

this name to you?

```
No, no, let me finish. No I'm not sayin' thirty days-
1
   Α
         Okay.
         less than thirty days. I'm sayin' there's only thirty
3
         days in September right?
4
         Pardon me?
5
   Α
         There's only thirty days in the month of September right?
7
    Α
         Yes.
         Okay so would it be few, a few days would be either, we
8
         start with two, the, October 1st, around October 1st or
9
         when? October 1st or October 2nd, 3rd, 4th?
10
         Well like I, I just told you, I don't remember exactly
11
   Α
         what day it was. I said a few days after the incident
12
13
         happened okay? Within a week okay?
         Within a week. So that would be, within a week the, the
14
         space would be October 6th then. October 6th?
15
         Somewhere in that neighborhood yes.
    Α
16
         Between October, okay between September 29th and October
17
         6<sup>th</sup> right?
18
         Somewhere in that neighborhood correct.
19
         Okay. Um you said you met this person that you known as
20
         Jacob, once again, you said you know him as Jacob Woods-
21
         That's how you were introduced to me in the beginning
22
   Α
23
         correct.
         That's how the person that had my features and produced
24
```

25

No that was you, not some person like you. 1 Α Okay, okay let me get to this then. What, what makes you 2 so sure that it's, this, the person that's standing right 3 here was the person who was at Davison Race Shop? 4 5 Because when somebody robs you you seem to pay attention Α to what's goin' on. 6 Okay so, so um you didn't um, you didn't state that the 7 8 person with dreadlocks robbed you? I mean with the hair-Well there was three people. 9 Α Three people okay so what makes you remember, okay, no 10 sorry about that. Is, have you ever heard of mistaken 11 identity? 12 13 A I have heard the word, the term yes. Does that exist in you, in, to you? 14 Q 15 Α No. It don't, mistaken identity don't exist to you? 16 It does exist but not in this case. 17 Α 18 Not in this case huh? So let me, we'll use this scenario 19 all right? If you was to get, get um robbed by a Asian, 20 group, a Asian person, okay in this predicament you said it was three people right? 21 Correct. 22 Α Um a Asian person right, you was to get robbed by three 23

that robbed you again?

Asian people 'cause, how many, what color was the people

They were black. 1 A Black? African-American okay um okay, this scenario I'm 2 3 gonna use, I used it earlier. Is it all right Mr. Larobardiere or the Court? 4 5 THE COURT: Mr. Pouncy please proceed with your question. 6 7 MR. POUNCY: Okay thank you. Okay you was-8 THE COURT: And if Mr. Larobardiere thinks you're doin' somethin' wrong, he'll stand up and object. 9 MR. POUNCY: Okay no problem. 10 BY MR. POUNCY: 11 12 Okay if you was um, you was robbed and what else? 13 Carjacked, some cars was tooken from you right? Right. 14 Α Okay if you was robbed and carjacked by a group of Asian, 15 16 a group of Asian peers, three Asian peers right, human 17 beings or whatever, and you was to call, you was to call 18 um the police, the law enforcement which is you know made 19 to serve and protect us bein' the citizens, as citizens 20 right? 21 Α Correct. And you give a report or whatever what, what, what would 22 you, your report be to those people? 23 24 Α Whatever-25 To the, to the officer?

Α

Well I'm just-

What, you know whatever I remembered in my mind. 1 Α 2 seen. What you remembered right? 3 Um hm. 4 Α Okay and what would you remember? Three Asian people, 5 three Asian males or females? 6 Depends on what features they had, their size. 7 Α If it was Asian people though? 8 Well the Asian people are people okay? 9 Α 10 I'm talkin' about race because me and you are of different race-11 I'm not talkin' about race though. 12 not to be, not to be racist or anything, I'm just tryin' 13 to ask some questions and get to the bottom of this 14 15 that's all. Me and you are different race right? 16 Pardon me? Α Me and you are of a different race right? 17 18 Α I assume so yes. Okay if a Asian person, is that a different, you not 19 Asian right? 20 You look and see. 21 22 Pardon me? You look. 23 Α 24 I don't want to guess or anything 'cause this-

```
this already a guessing game, I don't want to guess.
1
    0
         No I'm not Asian.
3
         All right. You think that remark you used was
         appropriate?
4
5
                   THE COURT: Mr. Pouncy-
                   MR. POUNCY: I'm just askin'-
6
7
                   THE COURT:
                                sir I just want you to ask direct
         questions okay?
8
                   MR. POUNCY: All right.
9
                                I'm gonna have you have a seat here
10
                   THE COURT:
         in a minute 'cause I, I'm really gettin' at the end of my
11
         rope with this. Ask your question so you can sit down.
12
                   MR. POUNCY:
13
                                 Okay.
    BY MR. POUNCY:
14
         Okay if you was robbed by this Asian group of people
15
         right you would explain to the officer that the people
16
         was Asian right?
17
18
                   THE COURT: And you've covered that.
19
         ask your question sir.
    BY MR. POUNCY:
20
21
    0
         Okay and then you give a description of 'em and then you,
22
         you don't have, that's the only thing, the only
         information that you have to provide for the police
23
         officer is the description of the people, how they look.
24
         So then it goes on the next day or whatever, you and your
25
```

24

25

partner, you said you was with your partner right?

A A friend of mine correct.

1

2

3 A friend of mine. You was with a friend of mine. 4 and your friend of yours, you all walkin' down, you all 5 goin' to a basketball game, a, a high school basketball 6 game right? And you all see, you see some, you see like, 7 it's like a, no I'm not use that I'm sorry. Well you 8 goin' to a restaurant right? I'm gonna use this one. You goin' to a restaurant and you see three Asian people 9 10 back there cookin' up, which would be males right, three 11 Asian males. And then you and your partner walk in the 12 store and you see these people that resemble to people that committed these offenses against you which is 13 14 terrible, you know what I mean? And then you would call, 15 and you would panic or what not and call the, call the 16 police and be like oh I see the people, I, I see 'em, the 17 people that did this to me right? And go to find out that after everything is broken apart that this person 18 19 was at work at the time, these three people was at work 20 at the time that you claim you, you complained about these three people taken ob, ob, items from you which is 21 a car, cell phone and-22

THE COURT: Doesn't seem like I'm gonna get you to get to your question Mr. Pouncy.

MR. POUNCY: That's okay, what would you, okay

```
(Judge Archie L. Hayman; 01-24-06; 4:27 p.m.)
1
2
         I'm sorry.
3
    BY MR. POUNCY:
         What would you, what would you um, how would you feel,
4
         what, just a second please. I'm, I'm gonna leave that
5
         alone then. So you don't have, do you have anything
6
7
         besides a person lookin' like a person to, to identify me
         as bein' the person who committed this crime against you?
8
9
         Far as like anything like DNA, fingerprints, shoe prints
         or anything like that? Blood or anything?
10
         Do I have any of that?
11
12
         Yes.
    Α
         Of course not.
13
         Pardon me?
14
15
         No.
         You don't? Okay. So is it a possible, okay so is it,
16
17
         all right.
                     So obviously would you think that it'd be a
         possibility that you could be mistaken, mistaken identify
18
19
         someone?
20
    Α
         In, in this particular case no.
         Not in this particular case. I'm just askin' if any, if
21
         any time is it possible that you can mistaken identify
22
         someone?
23
         Any, anybody can make a mistake in anything okay?
24
    Α
25
         Okay thank you. Okay.
    Ō.
                                  So how many times did you see
```

```
this person in, in your whole entire life?
1
         The first time I met him was at Scott's Race Shop okay?
   Α
2
         What day was that please?
3
         Pardon me?
4
    A
5
         What date was that?
   Α
         What date?
6
7
         Yes.
         It all happened all on the same day, September 29th.
8
9
         Okay. The second time you met this gentleman, these
10
         three gentleman?
         When we backed into this driveway on Kellar Street when
11
   Α
12
         they got out of their vehicle and approached my vehicle.
         Oh so this is what, this is another day?
13
    Q
14
   Α
         Same day.
         Same day okay so you only met this person one time right?
15
   Α
         Twice in the same day.
16
17
         Twice in the same day. Okay how long did you see, see
         this person like?
18
19
         The first time?
   Α
         Yes.
20
         Less then ten minutes.
21
         Less than ten minutes? While you was, while you was,
22
23
         okay while you was lookin' at this person was it on your
24
         mind like oh I got to remember these, these people, I got
         to remember these people before any of the alleged
25
```

25

carjacking and stuff took on. Do, was it in your mind 1 like oh I'm gonna remember this person, this person, was 2 that in your mind? 3 Well I, I paid attention to who I was talking to yes. Α 4 5 You did? 6 A Um hm. 7 Okay so who was the person who, to, you said a gun was pointed at you right? You alleged that. 8 9 Right. Α Who was the person that pointed the gun at you? 10 Α The person that was with you. 11 That was with me? Who, who, okay I'm gonna leave that 12 Q alone. Okay the person that looks like the person that 13 was with me? 14 You, you can word it any way you like but yes. 15 Α 16 Okay thank you um so um, um, excuse me a second. you, so you remember the, reviewin' the photo line-up 17 right? You remember the per, pardon me? 18 Yes. 19 Α You remember which number 'cause you know it's six people 20 on a page and what not? 21 22 Α No I don't remember which number no. If-23 Q

know remember the numbers.

I didn't think it was appropriate and I'd have to re, you

```
Well do you remember where that person was located on
1
         that page? 'Cause it's only, it's only six positions on
2
3
         the page of the-
4
         No I don't remember okay exactly what spot that person
5
         was on that page no.
         Okay but you was showed this line-up on, if I'm correct,
   Q
6
         between September 29th and October 6th right?
7
   Α
         I don't know which line-up you're referring to no.
8
         Okay well can I-
9
         I did, I did see some pictures yes.
10
         Between those date, between those dates?
11
         Somewhere in that vicinity yes.
12
                   MR. POUNCY: Okay may I approach please?
13
                   THE COURT:
                                Sure you may approach.
14
   BY MR. POUNCY:
15
         This is the line-up that was in, in my file by the people
16
         that was-
17
                   THE COURT: Mr. Pouncy just show it to him and
18
19
         ask your question sir.
20
                   MR. POUNCY: Okay.
21
   BY MR. POUNCY:
         Which person was it on there?
22
         Okay you're lookin' for the, which person am I looking
23
         for?
24
         The people that was involved.
25
```

```
This here's one of 'em.
1
                   THE COURT: Okay just one second. You're gonna
2
         have to be a little more specific if you will.
3
    BY MR. POUNCY:
5
         Okay well, well the person that, that was sittin', that
         was sittin' in that chair that you identified earlier.
6
7
         The person that looks like you?
    Α
8
         Yes.
9
         Okay. I'd say the bottom right hand corner.
    Α
10
         Bottom right hand corner?
                  THE COURT: May the record reflect that that's
11
12
         not me in the bottom right hand corner please?
                   MR. LAROBARDIERE: Object to his testifying
13
14
         Judge.
                   THE COURT:
                               Sorry?
15
                   MR. LAROBARDIERE: Objection. He's testifying.
16
                   THE COURT: The objection is that you're
17
         testifying-
18
19
                   MR. POUNCY: Okay sorry about that.
                   THE COURT: and I would sustain as to the
20
         objection as to testifying.
21
                   MR. POUNCY: May the record reflect that he,
22
         Mr., what's your name again?
23
24
                   THE WITNESS: Brady.
                   MR. POUNCY: Mr. Brady, sorry about that.
25
```

```
Brady um pointed to number six on this, on this line-up
1
         sayin', lookin' like me.
2
                   THE COURT: Okay any objection to that Mr.
3
         Larobardiere?
4
                                       I object Judge that that's
                   MR. LAROBARDIERE:
5
6
         confusing the witness. He's shown him a, numerous
7
         different photo arrays-
                   MR. POUNCY: I showed him one.
8
                   MR. LAROBARDIERE: and there's a way to clarify
9
10
         this which I do (inaudible).
                   THE COURT: Record shall reflect that the
11
         witness identified number 6. Go right ahead Mr. Pouncy.
12
                   MR. POUNCY: Thank you I appreciate that.
13
    BY MR. POUNCY:
14
         Okay so you said, okay where was this, your understanding
15
         of you and, there was three people you said right?
16
         Three?
17
         Correct.
18
   Α
         Where was, what was your understanding of where you all
19
         was supposed to go?
20
         Actually I didn't say anything okay? They were tellin'
21
         me where they were gonna go okay?.
22
    Q
         Oh the, the people who was there?
23
24
                The, the original agreement was that we were gonna
         go to your mechanics to look at the vehicle okay? All
25
```

```
Earlier you, they asked me where, you know where,
1
         the name of the place on, at that time I didn't recall
2
3
         you know where we were supposed to be going okay?
4
         when you were sitting over there at the table you brought
5
         up Kings Automotives okay and that's where you told me we
         were supposed to go?
6
7
         Pardon me?
                     When I was sittin' where?
8
         When you were sitting at the bench over there earlier.
         You brought up Kings Automotive. I didn't, I didn't say
9
10
         anything about Kings Automotive you did.
         Okay so yeah I did say that 'cause I thought that was
11
12
         the, the picture that they as referrin' to as King
13
         Automotive.
14
                   THE COURT:
                               Mr. Pouncy questions please.
15
                   MR. POUNCY:
                                 Okay.
16
    BY MR. POUNCY:
17
         So, so that picture, that picture that was on the, on
18
         the, what's, the, that's not a projector, well we call it
         a projector, some (inaudible) like projector, um isn't
19
20
         King Automotive where the plan, that, where you all
21
         planned to go?
22
    Α
              I don't know where we, you know I, my plan was to
         follow you where we were supposed to be going okay?
23
24
         Follow the person that looks like me you mean?
25
    Α
         I will state the person you, okay, following you to where
```

1		we were supposed to be going okay? You had mentioned
2		Kings Automotives but we apparently didn't go to Kings
3		Automotives.
4	Q	Okay so um if, if you, this,, this person that was
5		supposed to go to Kings Automotive, what, what make, why
6		would you end, end up on a dead end if, if that's not
7		King Automotive?
8	A	Because we were following you to your mechanics.
9		MR. POUNCY: Just a second please Your Honor, I
10		mean Court. Excuse me Court may I have this marked as
11		proposed defense number 1, is that correct Mr.
12		Breczinski? Number 1 please the, this photo that he
13		picked out which isn't me?
14		THE COURT: Any objection to number 1 Mr
15		MR. LAROBARDIERE: No objection.
16		THE COURT: Number 1 is in Mr. Pouncy.
17		(At 4:35 p.m., DX 1 admitted)
18		MR. POUNCY: Thank you. Where, where do I set
19		that at? Do I give it to anyone?
20		THE COURT: It's up to you. I'll leave that to
21		you sir.
22		MR. POUNCY: Do I give it to anyone?
23		THE COURT: That's up to you sir what you want
24		to do with it.
25		MR. POUNCY: And for the, for the record um

```
'cause number four was picked out on the last one can I-
1
                   THE COURT: Sir you're testifying. You can't
2
         testify.
3
                   MR. POUNCY: Oh I'm sorry.
4
                   THE COURT: Do you have any other questions for
5
         this witness?
6
7
    BY MR. POUNCY:
8
         Um so, so um you said you have no other way to identify
9
         me as bein' the person besides my fea, my physical
         features right now right?
10
11
         Standing here this close to you and so on like that, yes
12
         my memory shows it's you.
                   MR. POUNCY: All right thank you. I have no
13
         further questions of this witness.
14
                   THE COURT:
15
                               Thank you Mr. Pouncy. Any re-
         direct Mr. Larobardiere?
16
17
                   MR. LAROBARDIERE: Yes Judge.
18
                         RE-DIRECT EXAMINATION
    BY MR. LAROBARDIERE:
19
20
         Mr. Brady you remember meeting with Detective Gagliardi
         about tryin' to figure out the identity of these people?
21
22
    Α
         Yes.
23
         Do you remember being shown various photo arrays?
         Yes.
24
    Α
         Do you remember, you, you did say that you identified Mr.
25
```

```
Pouncy in one of those photo arrays?
1
2
    Α
         Yes.
         And do you remember that that being recorded somehow on
3
         the actual photo array-
4
         I-
5
    Α
         do you remember, do you remember some writing being
6
7
         memorialized on the-
         Right.
8
    Α
         photo array after you were positive about that?
9
         Right.
10
                   MR. LAROBARDIERE: Um Judge uh for the record
11
         I'll ask this be marked as People's number 8 if I may
12
         approach the witness?
13
                    THE COURT: You may approach the witness.
14
                   MR. LAROBARDIERE: May I approach the witness
15
         Judge?
16
                    THE COURT: Approach.
17
                    MR. POUNCY: Um I object.
18
19
                    THE COURT: You may approach.
20
                   MR. POUNCY: Not with the copy-
21
                    THE COURT: Mr. Pouncy.
    BY MR. LAROBARDIERE:
22
         When you met with Detective Gagliardi, did you look at
23
         color or black and white photos or both?
24
         I believe it was just black and white.
25
    Α
```

```
All right. And you indicated that you were, were, you
1
         did positively identify some of the carjackers?
2
3
   Α
         Correct.
         And at that time there was some writing put on the photo
4
5
         array?
   Α
         Yes.
6
         All right I'm showing you People's number 8, do you
7
         recognize this photo array?
8
                     (At 4:39 p.m., PX 8 introduced)
9
         Can I look at it?
10
11
         Yes.
         Yes.
12
   Α
13
         All right.
         Upper right hand corner. All right-
14
         What's significant to you about the upper right hand
15
         corner?
16
         This is the person that I identified okay? And it looks
17
         different in the, in the black and white okay?
18
         this the colored that I looked at? I don't know if it
19
         is, this is the one I looked at.
20
         There's also some writing on that if you look at the
21
         bottom and the, and the uh, the top right.
22
23
    Α
         Um hm.
         Do you remember when you were meeting with the detective
24
```

that that writing was placed on that photo array?

```
I don't recall that no.
1
    Α
         All right.
2
                   MR. LAROBARDIERE: Judge I'll ask that People's
3
         number 8 be admitted at this time.
4
                   THE COURT: Any objection to number 8 Mr.
5
         Pouncy?
6
                   MR. POUNCY: Yes I, um, no no objections.
7
                   THE COURT: All right 8 is in.
8
         Larobardiere any other questions sir?
9
10
                      (At 4:40 p.m., PX 8 admitted)
                   MR. LAROBARDIERE: No further questions.
11
                   THE COURT: You may step down sir. Thank you
12
         very much.
13
14
                     (At 4:40 p.m., witness excused)
                   THE COURT: At this time Trish I'm gonna let,
15
         we're gonna excuse the jurors for the day. Ladies and
16
         gentleman we've gone as far as we're gonna go today. I'm
17
18
         gonna ask you to come back tomorrow at one o'clock in the
19
         afternoon okay? We're gonna go from one to five
20
         tomorrow. We'll go from one to five Thursday, we're
21
         gonna go from eight thirty, hopefully have it finished by
22
         Friday if not earlier okay? I want to impress upon you
23
         that you're not to discuss this case with anyone okay?
         The only thing you're about to hear about this case
24
         should come in this courtroom. With that have a good
25
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afternoon and I'll see you tomorrow afternoon at one and report to the second floor, don't come up here. Go right to the jury board room and we'll come get you from there okay? And Trish you may escort them out. Everyone stand please.

(At 4:41 p.m., jury excused)

THE COURT: All right is there anything to take up at this time Mr. Larobardiere?

MR. LAROBARDIERE: No Your Honor.

THE COURT: Mr. Pouncy?

MR. POUNCY: Yes can I remember, um, can a request be made for that photo to be (inaudible) for tomorrow?

THE COURT: Yeah I think I've made the request to the deputies. Just remind me tomorrow and we'll see if we can find, if they have it see if we can get it okay?

MR. POUNCY: I didn't mean no disrespect today at all so-

THE COURT: Mr. Pouncy uh, you know uh as I said already I think you're makin' a big mistake. You are headstrong as I've told you, and I've told you before from that thing over here. You're hard headed and this is a perfect example of it okay? I don't know how this is gonna turn out but the thing that bothers me the most

1	is that you seem to be a young man who has a lot of
2	intelligence and I wish that you would focus that
3	intelligence on gettin' an education and tryin' to better
4	yourself instead of bein' in this courtroom 'cause you
5	really don't belong here, and I'm not sayin' because you
6	didn't do anything wrong. I'm sayin' you don't belong
7	here because you have the ability to do better and ${ t I'}{ t m}$
8	just shocked I'll be honest with you. It's, it's a
9	waste. But we'll see how this case turns out and then
10	we'll get back to it. Anything else Mr. Breczinski?
11	MR. BRECZINSKI: You said what time?
12	THE COURT: At one o'clock.
13	MR. BRECZINSKI: Okay so you're, you've got
14	other things in the morning?
15	THE COURT: Yes I do. I have to go speak to a
16	group of students at Central High School tomorrow. I
17	promised to speak at Central and that's where I'm goin'
18	tomorrow okay?
19	MR. BRECZINSKI: All right.
20	THE COURT: All right. See you guys in the
21	morning. Thank you.
22	UNIDENTIFIED PERSON: One o'clock tomorrow?
23	THE COURT: Yes one o'clock ma'am. And again,
24	I'm still prayin' for you ma'am also.

UNIDENTIFIED PERSON:

(Inaudible).

MR. POUNCY: Love you granny.

THE COURT: Yes ma'am.

(At 4:42 p.m., proceeding concluded)

STATE OF MICHIGAN)

) ss

COUNTY OF GENESEE)

I certify that this transcript, consisting of 314 pages, is a true and accurate transcription to the best of my ability of the digitally recorded proceeding in this case before Honorable Archie L. Hayman, on January 24, 2006, as recorded by the Law Clerk for the Honorable Archie L. Hayman.

Dated: June 27, 2006

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